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(32072-32905)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER I

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

Registrar: Herman von Hebel

Date: 2 March 2009

PROSECUTOR **Against** ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

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I. INTRODUCTION

1. The Special Court for Sierra Leone ("Special Court") was established in 2002 by an agreement between the United Nations and the Government of Sierra Leone ("Special Court Agreement").[1] The mandate of the Special Court is to prosecute those persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.[2] In particular, the Statute of the Special Court ("Statute") empowers the Special Court to prosecute persons who committed crimes against humanity, serious violations of Article 3 Common to the 1949 Geneva Conventions for the Protection of War Victims and of Additional Protocol II, other serious violations of international humanitarian law and specified crimes under Sierra Leonean law.[3]

2. It is under this mandate that the Accused were arrested, charged and the trial hearings were conducted. Accordingly, under the mandate given to the Chamber by the United Nations and the Republic of Sierra Leone the Chamber delivers this Judgement.

3. The Special Court is an international court, independent from the domestic legal system in Sierra Leone. It is for this reason that the Special Court Ratification Act (2002) provides that "Offences prosecuted before the Special Court are not prosecuted in the name of the Republic of Sierra Leone," Section 13 Special Court Ratification Act, 2002. Nevertheless, the Chamber pronounces this Judgement in the name of the people of Sierra Leone, knowing that it delivers the even-handed justice they sought when their Government requested the United Nations, after eleven years of conflict, to establish the Special Court.

4. The trial, officially titled *the Prosecutor v. Sesay, Kallon and Gbao*, has commonly been referred to as the RUF trial due to the fact that the three Accused persons were members of the Revolutionary United Front ("RUF"). The Trial Chamber ("Chamber") observes that this trial

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[1] Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, United Nations and Sierra Leone, 16 January 2002, 2178 U.N.T.S. 138 [Agreement]. The Agreement entered into force on 12 April 2002.

[2] See Special Court Agreement, Art. 1; Statute of the Special Court for Sierra Leone, annexed to the *Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, United Nations and Sierra Leone, 16 January 2002, 2178 U.N.T.S. 138 [Statute], Art. 1.1.

[3] Statute, Articles 2 to 5.

is not a trial of the RUF organisation itself, but rather a trial against three individuals, Issa Hassan Sesay, Morris Kallon and Augustine Gbao.

5. The Chamber notes that there were originally two other individuals indicted by the Special Court for Sierra Leone who were alleged to be more senior members of the RUF - Foday Saybana Sankoh and Sam "Mosquito" Bockarie. The Indictments against these individuals were withdrawn on 8 December 2003 after the Prosecution had confirmed their deaths.

6. Each of the three Accused was charged with eight counts of crimes against humanity, eight counts of war crimes (violations of Article 3 common to the Geneva Conventions[4] and Additional Protocol II[5]) and two counts of other serious violations of international humanitarian law. The charges relate to violations against civilians and civilian property and include acts of terrorism (Count 1), collective punishment (Count 2), extermination (Count 3), murder (Count 4 and 5), rape (Count 6), sexual slavery and other sexual violence (Count 7), inhumane acts (Count 8 and 11), outrages upon personal dignity (Count 9), mutilation (Count 10), enlisting or conscripting children under the age of 15 or using them to participate actively in hostilities (Count 12), enslavement (Count 13) and pillage (Count 14). The charges also include the offences against UNAMSIL peacekeepers including intentionally attacking personnel on a peacekeeping mission (Count 15), murder (Count 16 and 17) and hostage-taking (Count 18).[6]

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[4] Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S. 31 (entered into force 21 October 1950); Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces in at Sea, 12 August 1949, 75 U.N.T.S. 85 (entered into force 21 October 1950); Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135 (entered into force 21 October 1950); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 (entered into force 21 October 1950) [Geneva Convention IV].

[5] Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflict, 8 June 1977, 1125 U.N.T.S. 609 (entered into force 7 December 1978) [Additional Protocol II].

[6] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Corrected Amended Consolidated Indictment, 2 August 2006 [Indictment].

II. CONTEXT

1. The Political Context of the Conflict in Sierra Leone

7. Sierra Leone achieved independence from Britain in 1961.[7] It is comprised of the Western Area and three Provinces: the Northern Province, the Eastern Province and the Southern Province which are divided into thirteen districts and subdivided into chiefdoms.[8]

8. In the decades following independence, the country suffered several military coups and a one-party State was established in late 1978.[9] Despite its rich natural resources, which include diamonds and other minerals, Sierra Leone experienced an economic decline throughout the 1980s, largely attributable to rampant corruption.[10]

9. As a result of this flagrant corruption an armed opposition group, the Revolutionary United Front ("RUF"), was formed in the late 1980s with the aim of overthrowing the one-party rule of the All Peoples Congress ("APC") Government.[11] The principal leader of the RUF was Foday Sankoh, a former member of the Sierra Leone Army ("SLA").[12] The leadership of the RUF accused the APC of endemic corruption and oppression of the people of Sierra Leone.[13] The RUF professed that the use of arms was the only way to bring democracy to Sierra Leone and to fight the injustice, nepotism and penury they claimed was prevailing.[14]

10. The RUF was originally composed largely of former students of middle class origin;

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[7] Exhibit 146, Human Rights Watch, "We will kill you if you cry, Sexual Violence in the Sierra Leone Conflict", Vol. 15, No.1 (A), January 2002, p. 9 [Human Rights Watch, *We will kill you if you cry*].

[8] Consequential Order on Judicial Notice, Annex II, Part II, Tab 88: Map of Sierra Leone, Scale 1:350,000, UNAMSIL Geographic Information Service, 6 May 2002.

[9] *See* Bankole Thompson, *The Constitutional History and Law of Sierra Leone (1961-1995)* Lanham: University Press of American Inc., 1997.

[10] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 9; Exhibit 175, Human Rights Watch, "Sowing Terror, Atrocities against Civilians in Sierra Leone", Vol. 10, No. 3 (A), July 1998, p. 19437 [Human Rights Watch *Sowing Terror*]; Exhibit 181, No Peace Without Justice, Conflict Mapping in Sierra Leone: Violations of International Humanitarian Law from 1991 to 2002, p. 24234 [NPWJ Conflict Mapping Report].

[11] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 9; Transcript of 3 May 2005, Issa Sesay, p. 41; Transcript of 29 July 2005, TF1-036, p. 5 (CS).

[12] Consequential Order on Judicial Notice, Annex I, Fact J.

[13] Exhibit 174, Human Rights Watch, "Getting Away With Murder, Mutilation, and Rape: New Testimony From Sierra Leone," Vol. 11, No. 3(A), June 1999, p. 19375 [Human Rights Watch, *Murder*]; Exhibit 181, NPWJ Conflict Mapping Report, p. 24258; Transcript of 3 May 2005, Issa Sesay, p. 41. *See also* Exhibit 38, RUF Training Manual, p. 11072.

alienated and impoverished youths; former members of the SLA; and Liberian fighters from the National Patriotic Front of Liberia ("NPFL").[15] The NPFL was a rebel group led by Charles Taylor that initiated and fought in the Liberian civil war. The NPFL provided important military and logistical resources to the RUF thereby creating an intimate link between the civil wars in Liberia and Sierra Leone.[16]

11. Certain core members of the RUF, including Foday Sankoh, were trained in Libya[17] alongside other West African revolutionary leaders, including Charles Taylor and Blaise Campaoré.[18] The fighters who were trained in Libya were called the Special Forces and held the highest status within the movement.[19] In 1990 and 1991, the RUF were trained at Camp Naama in Liberia.[20] Those trained at Camp Naama were called Vanguards, and held the second highest status within the RUF.[21]

2. The Armed Conflict from 1991 to 1996

12. In March 1991, the RUF supported by members of the NPFL launched their first attack in Sierra Leone from Camp Naama.[22] By the end of 1991 the RUF had consolidated control over Kailahun District in the east and parts of Pujehun District in the south of Sierra Leone.[23] As the RUF spread throughout the country, they set up bases and captured civilians who were trained in the fighting techniques, war tactics and ideology of the movement.[24] Those

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[14] Transcript of 28 July 2005, TF1-036, p. 14 (CS); Transcript of 29 July 2005, TF1-036, p. 5 (CS); Transcript of 3 May 2007, Issa Sesay, pp. 50, 86; Transcript of 5 November 2007, DIS-149, pp. 24, 71.
[15] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 10; Exhibit 174, Human Rights Watch, *Murder* p. 19375 [Human Rights Watch, *Murder*]; Transcript of 11 July 2005, TF1-361, p. 42 (CS).
[16] Exhibit 35, Salute Report of Sam Bockarie, p. 2359-2372; Transcript of 4 October 2004, John Tarnue, pp. 104-105; Transcript of 20 July 2006, TF1-371, pp. 34-36; Transcript of 24 July 2006, TF1-371, pp. 57-66.
[17] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 10.
[18] Transcript of 4 October 2004, John Tarnue, pp. 61, 79.
[19] Transcript of 18 July 2005, TF1-361, p. 119 (CS); Transcript of 8 November 2005, TF1-366, p. 84 (CS); Transcript of 3 May 2007, Issa Sesay, p. 57.
[20] Transcript of 20 July 2006, TF1-371, p. 20 (CS); Transcript of 3 May 2007, Issa Sesay, p. 44.
[21] Transcript of 25 April 2005, TF1-362, p. 49 (CS); Transcript of 12 July 2005, TF1-361, p. 12 (CS); Transcript of 8 November 2005, TF1-366, p. 84 (CS); Transcript of 3 May 2007, Issa Sesay, p. 57.
[22] Exhibit 174, Human Rights Watch, *Murder*, p. 19375; Exhibit 181, NPWJ Conflict Mapping Report, p. 24258; Transcript of 20 July 2006, TF1-371, p. 22 (CS); Transcript of 3 May 2007, Issa Sesay, p. 56.
[23] Exhibit 181, NPWJ Conflict Mapping Report, p. 24236; Transcript of 19 July 2005, TF1-360, pp. 92-93 (CS).
[24] Transcript of 20 April 2005, TF1-362, pp. 4-7; Transcript of 20 July 2006, TF1-371, p. 21 (CS); Transcript of 3 May 2007, Issa Sesay, pp. 48, 55; Transcript of 25 October 2007, DIS-069, pp. 11-12; Transcript of 5 May 2008, DMK-032, pp. 7-9.

trained in Sierra Leone were called Junior Commandos.[25]

13. In April 1992, the APC government of President Joseph Momoh was overthrown in a military coup by Captain Valentine Strasser.[26] Strasser formed the National Provisional Ruling Council ("NPRC") and ruled until January 1996 when he was overthrown by his deputy, Brigadier Julius Maada Bio.[27]

14. In 1994 the RUF established a main base called Camp Zogoda in the south-west of Kenema District.[28] By the end of the year the RUF had extended its forces into the western and southern areas of Tonkolili District.[29] Even though the RUF were dislodged from parts of Kailahun by government troops in June 1993 and briefly in the early part of 1996, the RUF remained largely in control of Kailahun District throughout the conflict.[30]

15. By 1995 the RUF controlled the southern and eastern Districts of Kailahun, Pujehun, Bo and Kenema.[31] The RUF also attacked areas in Port Loko District, Kambia District and the Western Area.[32] From their south-eastern stronghold the RUF moved into Bonthe and Moyamba Districts, which were financially important to the Sierra Leone Government.[33] The RUF also moved north into Kono District from Kailahun, eventually occupying Koidu Town.[34]

16. The inability of the Government forces to independently repel the RUF triggered the emergence of civilian-led paramilitary groups.[35] The main regional groups were the Kamajors in the East and the South, the Donsos in the remote East, the Gbettis or Kapras in the North and the Tamboros in the far North of the country.[36] These pro-Government militias eventually

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[25] Transcript of 12 July 2005, TF1-361, p. 12 (CS); Transcript of 8 November 2005, TF1-366, p. 84 (CS); Transcript of 3 May 2007, Issa Sesay, p. 57.
[26] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 10.
[27] Exhibit 181, NPWJ Conflict Mapping Report, p. 24236; Transcript of 24 January 2005, TF1-071, p. 30.
[28] Exhibit 181, NPWJ Conflict Mapping Report, p. 24237; Transcript of 19 July 2005, TF1-361, p. 107 (CS); Transcript of 27 July 2005, TF1-036, p. 25 (CS).
[29] Exhibit 181, NPWJ Conflict Mapping Report, p. 24239; Transcript of 26 February 2008, DIS-063, pp. 112-113.
[30] Exhibit 181, NPWJ Conflict Mapping Report, p. 24237; Transcript of 23 October 2007, DIS-069, pp. 3-5.
[31] Transcript of 19 July 2005, TF1-360, pp. 105-108 (CS); Transcript of 28 July 2005, TF1-036, p. 24 (CS); Transcript of 22 November 2005, TF1-071, pp. 38-39; Transcript of 4 May 2007, Issa Sesay, pp. 19, 49; Transcript of 24 January 2008, DIS-157, pp. 36, 43-44.
[32] Exhibit 181, NPWJ Conflict Mapping Report, p. 24240.
[33] Exhibit 181, NPWJ Conflict Mapping Report, p. 24240.
[34] Exhibit 181, NPWJ Conflict Mapping Report, p. 24240; Transcript of 30 June 2006, TF1-117, pp. 103-104.
[35] Exhibit 181, NPWJ Conflict Mapping Report, p. 24239; Transcript of 19 May 2008, DMK-444, p. 15 (CS).
[36] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 10; Exhibit 181, NPWJ Conflict Mapping Report, p. 24243.

became collectively known as the Civil Defence Forces ("CDF") and fought on behalf of the Government after the May 1997 coup.[37]

17. The RUF's military successes also led to a contract between the Government of Sierra Leone and a private security company, Executive Outcomes, in March 1995 in order to repel the rebels.[38] Executive Outcomes formed and trained a "Special Task Force" (STF), using a large number of demobilised Liberian militia from the United Liberation Movement of Liberia for Democracy ("ULIMO")[39] who were fighting the NPFL of Charles Taylor. The combined forces of the SLA, the local militias, the STF and Executive Outcomes were able to displace the RUF from the Western Area and push them back into the provinces.[40] From 1995 to 1996, these combined forces gained ground in many Districts held by the RUF.[41] The RUF managed to retain control of most of Kailahun District, while elsewhere its area of control decreased to isolated pockets within a few districts of Sierra Leone.[42]

18. In February 1996, democratic elections were held. Despite its professed ideological commitment to democracy, the RUF boycotted the elections and continued active hostilities.[43] Ahmad Tejan Kabbah of the Sierra Leone People's Party ("SLPP") was elected President.[44] During this period the CDF gained increased prominence, causing acrimony between the SLA and the new Government, as the SLA believed that the Government was neglecting the Army.[45] Tensions between the local militias and the SLA fomented as they argued with the Government over key resources and policies, including military cutbacks by President Kabbah which were perceived as preference for the local militias.[46]

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[37] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 10.
[38] Exhibit 146, Human Rights Watch, We will kill you if you cry, p. 10.
[39] Exhibit 181, NPWJ Conflict Mapping Report, p. 24241. *See also* Exhibit 119, AFRC Transcript of 25 May 2005, TF1-334, pp. 27-28.
[40] Exhibit 181, NPWJ Conflict Mapping Report, p. 24241; Transcript of 19 July 2005, TF1-360, p. 108 (CS).
[41] Exhibit 181, NPWJ Conflict Mapping Report, p. 24243; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL 2004-15-T, Kallon Defence Filing in Compliance with Scheduling Order Concerning the Preparation and Commencement of the Defence Case, 5 March 2007, Annex H, para. 2 [Kallon Agreed Facts]; Transcript of 19 July 2005, TF1-360, p. 107 (CS).
[42] Kallon Agreed Facts, para. 2; Transcript of 19 July 2005, TF1-360, pp. 106-108 (CS); Transcript of 4 May 2007, Issa Sesay, p. 58; Transcript of 24 January 2008, DIS-157, pp. 43-44.
[43] Exhibit 174, Human Rights Watch, *Murder*, p. 19375; Exhibit 181, NPWJ Conflict Mapping Report, pp. 24236, 24242-24243; Transcript of 29 February 2008, DIS-89, p. 2; Transcript of 16 May 2008, Tejan Kabbah, pp. 7-8.
[44] Exhibit 174, Human Rights Watch, *Murder*, p. 19375; Exhibit 181, NPWJ Conflict Mapping Report, pp. 24236, 24242-24243; Transcript of 29 February 2008, DIS-89, p. 2; Transcript of 16 May 2008, Tejan Kabbah, pp. 7-8.
[45] Exhibit 181, NPWJ Conflict Mapping Report, pp. 24243-24244.
[46] Exhibit 174, Human Rights Watch, *Murder*, p. 19375; Exhibit 181, NPWJ Conflict Mapping Report, p. 24244.

19. With mounting international pressure and in an effort to put an end to the civil war, peace talks were initiated in May 1996 between the Government and the RUF. On 30 November 1996 in Abidjan, Cote d'Ivoire, President Kabbah and Foday Sankoh signed a peace agreement.[47] The "Abidjan Accord" called for a cease-fire, disarmament and demobilisation, and the withdrawal of foreign forces including Executive Outcomes from Sierra Leone.[48] The Abidjan Accord also called for the cessation of hostilities on both sides, with the Government extending amnesty to RUF members in return for peace.[49]

20. The temporary cessation of active hostilities brought by the Abidjan Accord ended in January 1997.[50] In February 1997, while returning to Sierra Leone from Cote d'Ivoire, Foday Sankoh was placed under house arrest in Nigeria for alleged weapons violations.[51]

3. AFRC/RUF Junta Period (May 1997 to February 1998)

21. On 25 May 1997, President Kabbah and his Government were overthrown by SLA soldiers who formed the Armed Forces Revolutionary Council ("AFRC").[52] The coup members appointed Johnny Paul Koroma, a retired SLA officer who had been incarcerated for a failed coup attempt in September 1996, to lead the AFRC as its Chairman.[53] The AFRC immediately suspended the Constitution of Sierra Leone, dissolved the Parliament and banned all political parties.[54] President Kabbah fled into exile in neighbouring Guinea.[55]

22. Shortly after the AFRC seized power, Johnny Paul Koroma invited the RUF into a governing alliance.[56] Foday Sankoh, who was under arrest in Nigeria at the time, accepted the

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[47] Consequential Order on Judicial Notice, Annex I, Fact N.
[48] Exhibit 181, NPWJ Conflict Mapping Report, p. 24244.
[49] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 11.
[50] Consequential Order on Judicial Notice, Annex I, Facts M and N.
[51] Transcript of 25 April 2005, TF1-362, p. 3 (CS); Transcript of 22 November 2005, TF1-045, p. 35 (CS); Transcript of 31 March 2006, TF1-168, pp. 53-54 (CS); Transcript of 1 August 2006, TF1-371, p. 78 (CS).
[52] Consequential Order on Judicial Notice, Annex I, Fact O. The Chamber also took Judicial Notice of the fact that the Junta Period was from 25 May 1997 to about 14 February 1998 (Consequential Order on Judicial Notice, Annex I, Facts P-V).
[53] Consequential Order on Judicial Notice, Annex I, Fact P; Transcript of 28 July 2005, TF1-036, p. 52 (CS); Transcript of 5 December 2005, TF1-184, p. 69; Transcript of 20 July 2006, TF1-371, pp. 24-25 (CS).
[54] Exhibit 149, Proclamation, Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation, 1997, Public Notice No. 3 of 1997, 28 May 1997; Transcript of 20 July 2006, TF1-371, p. 31 (CS).
[55] Transcript of 16 May 2008, Tejan Kabbah, p. 86.
[56] Transcript of 28 July 2005, TF1-036, p. 19 (CS); Transcript of 4 May 2007, Issa Sesay, pp. 70-72; Transcript of 9 November 2007, DIS-281, p. 3 (CS).

invitation.[57] After announcing by radio broadcast that they were joining forces with the AFRC coup plotters, the RUF joined them in Freetown.[58] The Supreme Council, which was the governing body of the Junta regime, included members of both the AFRC and the RUF and was the sole executive and legislative authority in Sierra Leone.[59] Government positions were subsequently divided unequally between the AFRC and the RUF, with the AFRC receiving the more senior positions.[60]

23. As the SLA forces were widely deployed throughout Sierra Leone prior to the coup, and the AFRC was largely comprised of former SLA soldiers, the SLA was a major source of strength to the Junta Government.[61] Throughout 1997 the AFRC gained control of the major towns throughout the country, including Freetown, Bo, Kenema, Koidu, Pujehun and Bonthe.[62] The addition of the RUF strongholds, including Kailahun District, further extended the Junta's control over the country.[63] The AFRC/RUF also controlled the diamond mines, including those in Tongo Fields in Kenema District, and used the proceeds to finance their objectives.[64]

24. While the two groups initially had a functioning relationship, over time it began to sour and disagreements between the AFRC and RUF were frequent.[65] On or about August 1997 Sam Bockarie, the acting leader of the RUF in the absence of Foday Sankoh, left Freetown to establish his headquarters in Kenema, as he was dissatisfied with Johnny Paul Koroma's management of the government[66] and the discord was such that he feared that attempts would be made on his life.[67]

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[57] Transcript of 18 October 2004, George Johnson, p. 89; Transcript of 28 July 2005, TF1-036, p. 28 (CS).
[58] Transcript of 24 March 2006, TF1-174, p. 43 (CS); Transcript of 31 March 2006, TF1-168, p. 48 (CS); Transcript of 21 June 2006, TF1-367, p. 49 (CS); Transcript of 29 June 2006, TF1-117, pp. 98-101.
[59] Consequential Order on Judicial Notice, Annex I, Facts T-U.
[60] Consequential Order on Judicial Notice, Annex I, Facts S-U; Exhibit 150, The Sierra Leone Gazette No. 52, The Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation, 1997, Government Notice No. 215, 4 September 1997, p. 19064.
[61] Exhibit 181, NPWJ Conflict Mapping Report, p. 24245; *see generally* Transcript of 15 February 2008, DIS-046, pp. 67-69 (CS).
[62] Exhibit 181, NPWJ Conflict Mapping Report, p. 24245.
[63] Exhibit 181, NPWJ Conflict Mapping Report, p. 24245; Transcript of 20 July 2006, TF1-371, p. 25 (CS).
[64] Exhibit 181, NPWJ Conflict Mapping Report, p. 24246; Transcript of 20 July 2006, TF1-371, p. 35 (CS).
[65] Transcript of 20 July 2006, TF1-371, p. 38 (CS); Transcript of 22 October 2007, DIS-069, pp. 80-81.
[66] Consequential Order on Judicial Notice, Annex I, Fact V; Kallon Agreed Facts, para. 7; Transcript of 14 October 2004, George Johnson, p. 34; Transcript of 28 July 2005, TF1-036, pp. 36-37 (CS); Transcript of 9 November 2007, DIS-281, pp. 7-8 (CS); Transcript of 14 April 2008, Morris Kallon, p. 109.
[67] Exhibit 35, Salute Report of Sam Bockarie, p. 2361.

25. From exile in Guinea, President Kabbah mobilised international condemnation of the AFRC/RUF Junta Government.[68] The Economic Community of West African States ("ECOWAS") placed a trade and arms embargo against Sierra Leone and deployed the Ceasefire Monitoring Group ("ECOMOG") to enforce these sanctions.[69] ECOMOG forces occupied Lungi and secured control of Lungi International Airport, outside of Freetown.[70] On 8 October 1997 the United Nations Security Council also adopted a resolution imposing mandatory sanctions on Sierra Leone.[71]

26. Regional and international pressure on the Junta Government increased as human rights violations within Sierra Leone escalated.[72] The political, military and economic pressure on the Junta Government forced it to accept the ECOWAS Six-Month Peace Plan on 23 October 1997.[73] The plan, known as the Conakry Accord, called for an immediate cessation of hostilities throughout Sierra Leone and the restoration of the elected Government of President Kabbah by 22 May 1998.[74] Soon after the Conakry Accord was signed however, hostilities resumed.[75]

27. In the meantime, the AFRC and RUF remained under military pressure from the CDF and ECOMOG.[76] The CDF maintained strongholds in the country, specifically Moyamba District and the mainland of Bonthe District.[77] In late 1997 the CDF increased pressure on the Junta Government by preventing transport to and from Freetown.[78] ECOMOG forces deployed from Port Loko and Guinea launched attacks against the Junta Government

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[68] Exhibit 174, Human Rights Watch, *Murder*, p. 19376.
[69] Exhibit 153, UN Security Council Resolution 1132, p. 19077-19080; Exhibit 181, NPWJ Conflict Mapping Report, p. 2246.
[70] Exhibit 174, Human Rights Watch, *Murder*, p. 19376; Exhibit 181, NPWJ Conflict Mapping Report, p. 24246; Transcript of 20 July 2006, TF1-371, p. 34 (CS).
[71] Exhibit 153, UN Security Council Resolution 1132, p. 19077-19080; Exhibit 174, Human Rights Watch, *Murder*, p. 19376; Transcript of 18 November 2005, TF1-045, p. 88 (CS).
[72] Exhibit 154, UN Security Council Resolution 1181, p. 19082-19085.
[73] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 11.
[74] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 11; Transcript of 19 October 2004, George Johnson, pp. 107-108.
[75] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 11.
[76] Transcript of 1 August 2006, TF1-371, p. 80 (CS); Exhibit 181, NPWJ Conflict Mapping Report, pp. 24246-24247.
[77] Exhibit 181, NPWJ Conflict Mapping Report, p. 24246; Transcript of 20 July 2006, TF1-371, p. 34 (CS); Transcript of 8 May 2007, Issa Sesay, pp. 6-7.
[78] Exhibit 181, NPWJ Conflict Mapping Report, p. 24246.

throughout the latter half of 1997.[79]

4. The Armed Conflict from 1998 to 2001

28. On 14 February 1998, ECOMOG and CDF forces attacked the AFRC/RUF contingent in Freetown.[80] ECOMOG and the CDF eventually took control of Freetown, causing the AFRC/RUF to flee from the city.[81] President Kabbah was reinstated and ECOMOG forces were able to establish control over about two-thirds of the country.[82] This period is known as "the Intervention."[83]

29. The AFRC/RUF withdrawal from Freetown was chaotic and disorganised.[84] The fleeing fighters passed through the southern villages of the Western Area and within three to four days reached Masiaka in Port Loko District.[85] This episode was characterised by widespread looting by the retreating Junta fighters.[86]

30. While the fleeing masses of fighters moved from Masiaka to Makeni, the AFRC and RUF leaders met to discuss future plans and decided to attack Kono District.[87] Their aim was to regain control of Kono's diamonds.[88] However, a group of RUF fighters and AFRC fighters under the command of SAJ Musa, the Deputy Chairman of the Junta, were unwilling to subordinate themselves to RUF command and broke away from the AFRC/RUF forces, travelling instead to Koinadugu District.[89] The remaining AFRC/RUF fighters were able to capture Koidu Town, the capital of Kono District, on or about 1 March 1998, following which

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[79] Exhibit 181, NPWJ Conflict Mapping Report, p. 24247.
[80] Consequential Order on Judicial Notice, Annex I, Fact V.
[81] Transcript of 8 May 2007, Issa Sesay, p. 87.
[82] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 11; Exhibit 174, Human Rights Watch, *Murder*, p. 19376.
[83] Transcript of 24 January 2005, TF1-071, p. 108 (CS); Transcript of 28 April 2005, TF1-114, p. 42; Transcript of 1 August 2006, TF1-317, p. 102; Transcript of 8 May 2007, Issa Sesay, p. 42; Transcript of 19 October 2007, DIS-178, p. 6.
[84] Transcript of 15 January 2008, DIS-214, p. 60 (CS).
[85] Transcript of 14 October 2004, George Johnson, pp. 45-50.
[86] Transcript of 20 July 2005, TF1-360, p. 11 (CS); Transcript of 7 November 2005, TF1-366, p. 100 (CS); Transcript of 21 November 2005, TF1-045, p. 11; Transcript of 20 March 2006, TF1-174, p. 102 (CS).
[87] Transcript of 14 October 2004, George Johnson, pp. 56-60.
[88] Transcript of 14 October 2004, George Johnson, p. 59; Transcript of 7 November 2005, TF1-366, p. 106 (CS).
[89] Transcript of 14 October 2004, George Johnson, pp. 57-60; Transcript of 19 January 2005, TF1-071, pp. 54-55; Transcript of 11 January 2008, Abu Bakar Mustapha, p. 54.

their forces were stationed throughout the District.[90]

31. Throughout March and April 1998, ECOMOG forces made significant advances into both the northern and southern territories previously held by the AFRC/RUF forces. ECOMOG managed to recapture Koidu Town in Kono District and secure key access routes to the Guinea border.[91] Aided by CDF fighters, ECOMOG also established control over Kenema and Pujehun Districts in the southeast.

32. In May 1998, a team of military and security observers sent by the United Nations Security Council arrived in Sierra Leone, and on 13 July 1998 a UN Observer Mission in Sierra Leone ("UNOMSIL") was formally established.[92]

33. Although the AFRC and RUF operated in Kono District pursuant to a joint military command structure, tensions between the two forces continued. Sometime in May 1998, the two groups split as a result of leadership disputes, as a result of which Sam Bockarie arrested senior AFRC leaders Johnny Paul Koroma and Alex Tamba Brima ("Gullit") in Kailahun. Once Gullit was released, he led the majority of AFRC fighters to Koinadugu and Bombali Districts where they joined SAJ Musa. The two Commanders agreed to establish a base in the Northwest to prepare for an attack on Freetown.[93]

34. In August 1998 the RUF launched the Fiti Fata Mission, attacking the ECOMOG troops in Kono District.[94] The mission was commanded by Denis Mingo, alias Superman. The attack was a major failure and led to the breakdowns of relationships between key RUF Commanders, resulting in the departure of Superman together with a number of fighters and a considerable amount of ammunition to Koinadugu District. In December 1998, following ECOMOG's capture of Kono, Sesay led a successful RUF attack to recapture Kono, known as

[90] Transcript of 14 October 2004, George Johnson, p. 60; Transcript 8 November 2005, TF1-366, pp. 5-7 (CS); Transcript of 9 May 2007, Issa Sesay, pp. 36-37.
[91] Exhibit 181, NPWJ Conflict Mapping Report, pp. 33-34.
[92] Exhibit 146, Human Rights Watch, *We will kill you if you cry*, p. 13.
[93] Transcript of 21 July 2005, TF1-360, p. 22 (CS).
[94] Transcript of 8 November 2005, TF1-366, pp. 79-80; Transcript of 10 July 2006, TF1-041, pp. 50, 53; Transcript of 16 May 2007, Issa Sesay, p. 14; Transcript of 12 November 2007, DIS-281, p. 25; Transcript of 17 May 2008, DIS-214, pp. 65-66.

Operation No Living Thing or Operation Spare No Soul.[95]

35. From May to November 1998 the mass of AFRC fighters led by Alex Tamba Brima, alias Gullit, moved across the Eastern Province to the Northern Province. This movement, carried out independently and without coordination with the RUF, was mainly by foot and characterised by fighters targeting the civilian population.[96] The fighters were accompanied by their families and by hundreds of abducted civilians. The forces consolidated near the border between Bombali and Port Loko Districts, locating their base first in Rosos Town and then in 'Colonel Eddie Town'.[97] From 'Colonel Eddie Town' the fighters staged a number of attacks on ECOMOG positions in order to capture and re-stock their supplies of weapons and ammunition.[98]

36. In November 1998, the band of AFRC fighters led by SAJ Musa joined the fighters stationed in 'Colonel Eddie Town'.[99] The Commanders decided to stage an attack on Freetown with the aim of reinstating the Sierra Leone Army.[100] There was little communication or coordination at this time between these forces and the RUF.[101]

37. While the AFRC fighters were advancing towards Freetown, the RUF fighters in the east recaptured Koidu Town and then Makeni in Bombali District on 25 December 1998.[102] As a result, the RUF once again controlled much of the area harbouring Sierra Leone's natural resources and economic assets.[103]

38. In late December in Benguema, outside of Freetown, AFRC fighters decided to destroy ammunition they were unable to carry; this resulted in an explosion which killed SAJ Musa.[104] Gullit filled the leadership vacuum left by SAJ Musa's death and under his command the

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[95] Transcript of 28 July 2005, TF1-036, p. 61; Transcript of 21 November 2005, TF1-045, p. 75; Transcript of 30 May 2007, Issa Sesay, p. 36.
[96] Transcript of 19 October 2004, George Johnson, pp. 78-79, 85.
[97] 'Colonel Eddie Town' was also referred to by witnesses as 'Major Eddie Town'.
[98] Exhibit 119, Transcript from AFRC Trial, Transcript of 25 May 2005, TF1-334, pp. 91-93; Transcript of 13 June 2005, TF1-334, pp. 88-89.
[99] Transcript of 12 July 2005, TF1-361, pp. 70-73.
[100] Transcript of 19 October 2004, George Johnson, pp. 58-59.
[101] Transcript of 19 October 2004, George Johnson, p. 53.
[102] Exhibit 174, Human Rights Watch, *Murder*, p. 19376.
[103] Exhibit 174, Human Rights Watch, *Murder*, p. 19376.
[104] Transcript of 18 October 2004, George Johnson, p. 33-34; Transcript of 20 March 2006, TF1-028, pp. 27-33.

AFRC forces launched a major attack on Freetown.[105]

39. On 6 January 1999, the AFRC fighters entered Freetown and captured the State House, the seat of government. The invading forces extensively targeted the civilian population, adding to the chaos by releasing all the prisoners held in Freetown's Pademba Road prison.[106] The same day, Sam Bockarie, leader of the RUF, claimed on Radio France International that his fighters had taken Freetown and would continue to defend the city.[107] The AFRC fighting forces attacked most of Freetown, save for the western part of the city. They continued to fight ECOMOG and CDF forces for the next three weeks and Bockarie promised to send reinforcements to assist them.[108] Eventually, however, the AFRC fighters were forced to retreat from Freetown, leaving behind a trail of structural destruction and countless civilian casualties.[109]

40. The promised RUF reinforcements were unable to enter Freetown due to heavy fighting with ECOMOG who were stationed at Jui and Kossoh Town on the Freetown Peninsula. The retreating AFRC fighters eventually met the RUF outside of Freetown at Waterloo.[110] These consolidated fighters reorganised and launched a second attack on Freetown, which failed.[111] After their expulsion from Freetown, many of the RUF and AFRC fighters returned to Makeni and the AFRC/RUF-controlled mining areas in the east. A faction of AFRC fighters, later known as the West Side Boys, remained in the area of Rogberi in Port Loko District, from where they continued to carry out attacks on the local civilian population.[112]

41. Following the attack on Freetown, international pressure mounted on President Kabbah to enter into a peace agreement with the armed opposition groups. Negotiations ensued between the Government and the RUF, with the notable exclusion of high-ranking

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[105] Exhibit 119, AFRC Transcript of 13 June 2005, TF1-334, pp. 57-62; Transcript of 18 October 2004, George Johnson, pp. 33-34; Transcript of 5 December 2005, TF1-184, pp. 34-35; Transcript of 6 December 2005, TF1-184, p. 23 (CS).
[106] Transcript of 15 April, Morris Kallon, pp. 8-9.
[107] Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, p. 20.
[108] Exhibit 119, AFRC Transcript of 7 July 2006, TF1-334, p. 42 (CS).
[109] Exhibit 36, Salute Report of Issa Sesay, p. 2352.
[110] Transcript of 21 July 2005, TF1-360, pp. 47-48 (CS); Transcript of 5 December 2005, TF1-184, p. 54.
[111] Transcript of 18 October 2004, George Johnson, pp. 79-80; Transcript of 21 July 2005, TF1-360, pp. 45-46 (CS).
[112] Transcript of 21 July 2005, TF1-360, p. 46 (CS).

AFRC representatives.[113] A ceasefire entered into force on 24 May 1999.[114] On 7 July 1999 the Lomé Peace Accord was signed, resulting in a power-sharing agreement between the Government of President Kabbah and the RUF, represented by Foday Sankoh. RUF members were granted senior positions in Government, with Sankoh becoming President Kabbah's Vice-President. All RUF fighters were granted amnesty.[115]

42. Internal differences within the RUF leadership heightened during the period of power-sharing between the RUF and the government. In December 1999, Bockarie broke away from Sankoh and left the RUF. On 17 May 2000, Sankoh was arrested after his bodyguards killed several civilian protesters in front of his home in Freetown. Issa Sesay was appointed interim leader of the RUF.[116]

43. Hostilities resumed shortly after the Lomé Peace Accord. On 22 October 1999, the UN Security Council authorised the deployment of a 6,000-strong UN peacekeeping mission to Sierra Leone (UNAMSIL), to assist with the implementation of the Lomé Peace Accord. The UNAMSIL peacekeepers were deployed alongside the ECOMOG forces, until ECOMOG's withdrawal. The UNAMSIL peacekeeping force was gradually reinforced and expanded.[117]

44. Despite the agreement, several groups, including the West Side Boys, refused to disarm and hostilities resumed shortly thereafter. In May 2000, units of the RUF that had not yet disarmed abducted and detained hundreds of UNAMSIL peacekeepers. Eventually, the peacekeepers were released and disarmament continued. A ceasefire agreement was signed in Abuja on 10 November 2000.[118] It was not until 18 January 2002 that a final cessation of hostilities was declared by President Kabbah.[119]

5. The Conflict Areas

45. The main areas of Sierra Leone relevant to the Indictment are Freetown and the

[113] Transcript of 16 May 2008, Tejan Kabbah, p. 9. *See also* Transcript of 22 May 2007, Issa Sesay, p. 80.
[114] Exhibit 181, NPWJ Conflict Mapping Report, p. 24252.
[115] Transcript of 16 May 2008, Tejan Kabbah, p. 56.
[116] Transcript of 21 July 2005, TF1-360, p. 50 (CS); Transcript of 29 May 2007, Issa Sesay, p. 55-56.
[117] Exhibit 181, NPWJ Conflict Mapping Report, p. 24253.
[118] Exhibit 181, NPWJ Conflict Mapping Report, p. 24254.

Western Area, Port Loko District, Bombali District, Koinadugu District, Kono District, Kailahun District, Kenema District and Bo District. These areas, in the order they are listed, can be visualised as starting in the west of the country with Freetown and moving in a circle throughout the territory of Sierra Leone in a clock-wise direction back towards Freetown.

46. The remaining Districts include Tonkolili District, Kambia District, Moyamba District, Bonthe District and Pujehun District. Tonkolili District is in the centre of the country and is only relevant to Counts 15-18 of the Indictment concerning the offences against the UNAMSIL peacekeepers. Kambia District is located north of Port Loko District and is pertinent to Count 12 of the Indictment concerning child soldiers. Moyamba, Bonthe and Pujehun Districts are located in the south-west of the country and are not directly relevant to the Indictment.[120]

[119] Consequential Order on Judicial Notice, Annex I, Fact A; Exhibit 181, NPWJ Conflict Mapping Report, p. 24255. *See also* Exhibit 374, UNAMSIL Review of April 2002, 'War don don! President Kabbah declares decade-old civil conflict over'.

[120] Counts 12 and 15 to 18 of the Indictment refer to the entire territory of Sierra Leone. This Chamber, however, noted in its Oral Rule 98 Decision that the Prosecution had not adduced any evidence with regard to many Districts which were therefore irrelevant for the purposes of the Defence. As a result, Count 12 can now be understood as relating only to Bombali District, Kailahun District, Kambia District, Kenema District, Koinadugu District, Kono District, Port Loko District and Freetown and the Western Area. Counts 15 to 18 can now be understood to relate only to Bombali District, Port Loko District, Kailahun District, Kono District and Tonkolili District. *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15T, Oral Decision on RUF Motions for Judgement of Acquittal Pursuant to Rule 98, 25 October 2006 [RUF Oral Rule 98 Decision].

III. APPLICABLE LAW

1. Introduction

47. In accordance with Rule 72*bis* of the Rules of Procedure and Evidence of the Special Court ("Rules"), the applicable laws of the Special Court include:

(i) The Statute, the Agreement, and the Rules;

(ii) Where appropriate, other applicable treaties and the principles and rules of international customary law;

(iii) General principles of law derived from national laws or legal systems of the world, including, as appropriate, the national laws of the Republic of Sierra Leone, provided that those principles are not inconsistent with the Statute, the Agreement, and with international customary law and internationally recognised norms and standards.

48. The Chamber, consistent with the principle of *nullum crimen sine lege*, may only apply the law which was binding upon individuals at the time of the acts charged. The Chamber must, therefore, be satisfied that each of the crimes charged in the Indictment was recognised as criminal in customary international law and entailed individual criminal responsibility.[121] In determining the state of customary international law, the Chamber has found it useful to consider decisions of the International Criminal Tribunals for Rwanda and the former Yugoslavia. Such decisions have persuasive value, although modifications and adaptations may be required to take into account the particular circumstances of the Special Court.[122] Where appropriate, this Chamber has also considered the Statute of the International Criminal Court ("ICC Statute") and its impact on the content of customary international law.[123]

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[121] *See* the Chamber's ruling on this point: *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment (TC), 1 April 2004, para. 24 [*Kamara* Decision on Form of Indictment]. *See also*: Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000, paras 9 and 12 [Report of the Secretary-General on the Establishment of the Special Court], which provided that the "applicable law [of the Special Court] includes international as well as Sierra Leonean law" and in relation to the crimes under international law specifically noted that: "[i]n recognition of the principle of legality, in particular *nullum crimen sine lege*, and the prohibition on retroactive criminal legislation, the international crimes enumerated, are crimes considered to have the character of customary international law at the time of the alleged commission of the crime."

[122] *Kamara* Decision on Form of Indictment, paras 24-25.

[123] *Prosecutor v. Tadic*, IT-94-1-A, Judgement (AC), 15 July 1999, para. 223 [*Tadic* Appeal Judgement]; *Prosecutor v. Furundzija*, IT-95-17/1-T, Judgement (TC), 10 December 1998, para. 227 [*Furundzija* Trial Judgement].

2. Jurisdiction

49. The Statute of the Special Court for Sierra Leone ("Statute") empowers the Special Court to prosecute "persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone."[124] The Chamber has well-defined jurisdictional limits to try cases, notably:

(i) For serious violations of international humanitarian law and Sierra Leonean law;

(ii) Committed in the territory of Sierra Leone; and

(iii) Since 30 November 1996.

50. All crimes charged are alleged to have been committed in the territory of Sierra Leone since 30 November 1996, therefore the limitations listed in (ii) and (iii) need not be discussed here further.

2.1. Greatest Responsibility

51. In its Decision on Personal Jurisdiction, this Chamber had previously considered the requirement in Article 1(1) that the Accused be "persons who bear the greatest responsibility" and held that this was not solely a matter of prosecutorial discretion, but was also a jurisdictional limitation upon the Court, the determination of which is a judicial function.[125] In the CDF Trial Judgement, the Chamber relied on its previous finding that the jurisdictional requirement of the greatest responsibility was satisfied when the Indictment was confirmed on the basis that sufficient information existed "to provide reasonable grounds for believing that the Accused is a person who bears the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law".[126] The Chamber further stated that as this is a jurisdictional matter only, the issue of whether or not the Accused in fact bear the

[124] Art. 1 of the Statute.

[125] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana, 3 March 2004, para. 27 [*Fofana* Decision on Personal Jurisdiction].

greatest responsibility is not a material element that needs to be proved beyond reasonable doubt.[127]

52. The Appeals Chamber has now ruled on this matter. In its AFRC Judgement, the Appeals Chamber agreed with the Prosecution that the "greatest responsibility" requirement in Article 1(1) of the Statue is a guide to the Prosecution in the exercise of his prosecutorial discretion and is not a jurisdictional determination for either the Trial Chamber or the Appeals Chamber.[128] The Chamber emphasised:

> In the opinion of the Appeals Chamber it is inconceivable that after a long and expensive trial the Trial Chamber could conclude that although the commission of serious crimes has been established beyond reasonable doubt against the accused, the indictment ought to be struck out on the ground that it has not been proved that the accused was not one of those who bore the greatest responsibility.[129]

53. Although this issue was raised by the Kallon Defence,[130] in light of the finding that this is not a jurisdictional requirement the Trial Chamber considers that there is no requirement to examine whether the Accused in the present trial are "persons who bear the greatest responsibility".

2.2. Lomé Amnesty

54. The Trial Chamber considers itself bound by the Appeals Chamber's finding that the amnesty provision of the Lomé Peace Accord does not affect the jurisdiction of the Special Court for Sierra Leone.[131]

2.3. Violations of International Humanitarian Law and Sierra Leonean Law

55. No crimes under Sierra Leonean law are charged in the Indictment.[132] The Chamber

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[126] *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, Judgement (TC), 2 August 2007, paras 91-92 [CDF Trial Judgement]; *Fofana* Decision on Personal Jurisdiction, paras 41, 47 and 48.
[127] CDF Trial Judgement, para. 92.
[128] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-A, Judgement (AC), 22 February 2008, para. 282 [AFRC Appeal Judgement].
[129] AFRC Appeal Judgement, para. 283.
[130] Kallon Final Trial Brief, paras 30-34.
[131] *Prosecutor v. Kallon*, SCSL-04-15-AR72(E), *and Kamara*, SCSL-04-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, 13 March 2004, paras 88-90. *See also*: Kallon Final Trial Brief, paras 35-37.
[132] Article 5 of the Statute grants the Special Court power to try certain violations of Sierra Leonean criminal law, but none are alleged in any of the trials before the Court.

will therefore consider only violations of international humanitarian law.[133]

56. As was stated in the CDF Trial Judgement, consistent with the principle of *nullum crimen sine lege*, the Chamber must satisfy itself that all the crimes charged in the Indictment amount to violations of customary international humanitarian law which would have given rise to individual criminal responsibility at the time of the alleged violation.

57. The Chamber notes that the list of crimes against humanity in Article 2 of the Statute follows the enumeration included in the Statutes of the ICTY and ICTR, which were themselves patterned on Article 6 of the Nürnberg Charter.[134]

58. In this regard the Chamber recalls the ICTY Trial Chamber Decision in *Tadic* which states:

> The customary status of the Nürnberg Charter, and thus the attribution of individual criminal responsibility for the commission of crimes against humanity, was expressly noted by the Secretary-General [in his Report on the Establishment of the ICTY]. Additional codifications of international law have also confirmed the customary law status of the prohibition of crimes against humanity, as well as two of its most egregious manifestations: genocide and apartheid.
>
> Thus, since the Nürnberg Charter, the customary status of the prohibition against crimes against humanity and the attribution of individual criminal responsibility for their commission have not been seriously questioned. It would seem that this finding is implicit in the [*Tadic*] *Appeals Chamber Decision* [on Jurisdiction] which found that "[i]t is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict". If customary international law is determinative of what type of conflict is required in order to constitute a crime against humanity, the prohibition against crimes against humanity is necessarily part of customary international law [...][135]

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[133] Crimes against Humanity (Statute, Art. 2); Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Statute, Art. 3); and, Other Serious Violations of International Humanitarian Law (Statute, Art. 4).

[134] Report of the Secretary-General on the Establishment of the Special Court, para. 14. However, unlike Article 3 of the ICTR Statute and Article 5 of the ICTY Statute, Article 2 of the Statute of the Special Court incorporates sexual slavery, enforced prostitution, forced pregnancy and any other forms of sexual violence in addition to rape in paragraph (g) and includes ethnic grounds as grounds for persecution in paragraph (h). *Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Other Such Violations Committed in the Territory of Neighbouring States*, UN SC Res. 955 (1994) [ICTR Statute]; *Updated Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*, UN SC Res. 1660 (2006) [ICTY Statute].

[135] *Prosecutor v. Tadic*, IT-94-1-T, Judgement (TC), 7 May 1997, paras 622-623 [*Tadic* Trial Judgement] [original footnotes omitted].

59. The Chamber concurs with this position and finds that each of the crimes against humanity as charged in the Indictment was a crime under customary international law at the time of its alleged commission.

60. With regard to the crimes listed in Article 3 of the Statute, the Chamber notes that the Appeals Chamber has held that the core provisions in Article 3 of the Statute formed part of customary international law at the relevant time,[136] and that "[a]ny argument that these norms do not entail individual criminal responsibility has been put to rest in ICTY and ICTR jurisprudence."[137] The Appeals Chamber has also held that customary international law "represents the common standard of behaviour within the international community, thus even armed groups hostile to a particular government have to abide by these laws".[138]

61. The Chamber adopts the reasoning of the ICTY Appeals Chamber in *Tadic* on the issue of the evolution of Article 3 common to the Geneva Conventions ("Common Article 3") and Additional Protocol II from conventional into customary international law, where it held:

> Since the 1930s, the aforementioned distinction [between belligerency and insurgency] has gradually become more and more blurred, and international legal rules have increasingly emerged or have been agreed upon to regulate internal armed conflict [...]
>
> The emergence of international rules governing internal strife has occurred at two different levels: at the level of customary law and at that of treaty law. Two bodies of rules have thus crystallised, which are by no means conflicting or inconsistent, but instead mutually support and supplement each other. Indeed, the interplay between

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[136] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR72(E), Decision on Preliminary Motion on Lack of Jurisdiction *Materiae*: Nature of the Armed Conflict (AC), 25 May 2004, paras 21-24 [CDF Appeal Decision on Nature of Armed Conflict], citing *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement (TC), 2 September 1998, paras 601-617 [*Akayesu* Trial Judgement]; *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, (1986) ICJ Reports 14, paras 218-219 and 255 [*Military and Paramilitary Activities in and against Nicaragua*]; *Prosecutor v. Delalic, Mucic, Delic and Landzo*, Judgement, IT-96-21-T, Judgement (TC), 16 November 1998, para. 298 [*Celebici* Trial Judgement]; *Prosecutor v. Delalic, Mucic, Delic and Landzo*, Judgement, IT-96-21-A, Judgement (AC), 20 February 2001, paras 143, 147 and 150 [*Celebici* Appeal Judgement]; *Prosecutor v. Tadic*, IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (AC), 2 October 1995, paras 102 and 137 [*Tadic* Appeal Decision on Jurisdiction].

[137] CDF Appeal Decision on Nature of Armed Conflict, para. 24, citing *Tadic* Appeal Decision on Jurisdiction, paras 128-136; *Celebici* Trial Judgement, para. 307; *Celebici* Appeal Judgement, paras 159-174. *See also* Report of the Secretary-General on the establishment of a Special Court, para. 14: "Violations of common article 3 of the Geneva Conventions and of article 4 of Additional Protocol II thereto committed in an armed conflict not of an international character have long been considered customary international law, and in particular since the establishment of the two International Tribunals, have been recognized as customarily entailing the individual criminal responsibility of the accused."

[138] *Prosecutor v. Norman, Kondewa and Fofana*, SCSL-04-14-AR72(E), Decision on Preliminary Motion based on Lack of Jurisdiction (Child Recruitment) (AC), 31 May 2004, para. 22 [CDF Appeal Decision on Child Recruitment].

> these two sets of rules is such that some treaty rules have gradually become part of customary law. This holds true for common Article 3 of the 1949 Geneva Conventions [...], but also applies [...] to the core of Additional Protocol II of 1977.
>
> Attention must also be drawn to Additional Protocol II to the Geneva Conventions. Many provisions of this Protocol can now be regarded as declaratory of existing rules or as having crystallised emerging rules of customary law or else as having been strongly instrumental in their evolution as general principles.
>
> [C]ustomary international law imposes criminal liability for serious violations of Common Article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict [...][139]

62. The Chamber is also mindful of the finding of the ICTR Trial Chamber in *Akayesu* which relied on *Tadic* and examined specifically Article 4(2) of Additional Protocol II. It held that:

> [I]t should be recalled that the relevant Article in the context of the ICTR is Article 4(2) (Fundamental Guarantees) of Additional Protocol II. All of the guarantees, and enumerated in Article 4 reaffirm and supplement Common Article 3 and, as discussed above, Common Article 3 being customary in nature, the Chamber is of the opinion that these guarantees did also at the time of the events alleged in the Indictment form part of existing international customary law.
>
> [...] The list of serious violations which is provided in Article 4 of the Statute is taken from Common Article 3 – which contains fundamental prohibitions as a humanitarian minimum of protection for war victims – and Article 4 of Additional Protocol II, which equally outlines "Fundamental Guarantees". The list in Article 4 of the Statute thus comprises *serious* violations of the fundamental humanitarian guarantees which, as has been stated above, are recognized as part of international customary law. In the opinion of the Chamber, it is clear that the authors of such egregious violations must incur individual criminal responsibility for their deeds.[140]

63. The Chamber notes that the Appeals Chamber has examined the issue of the nature of the conflict with regard to the applicability of Common Article 3 and Additional Protocol II. The Appeals Chamber of the SCSL held that:

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[139] *Tadic* Appeal Decision on Jurisdiction, paras 97-98, 117, 134. *See also* para. 126 of the same decision: "[t]he emergence of the aforementioned general rules on internal armed conflicts does not imply that internal strife is regulated by general international law in all its aspects. Two particular limitations may be noted: (i) only a number of rules and principles governing international armed conflicts have gradually been extended to apply to internal conflicts; and (ii) this extension has not taken place in the form of a full and mechanical transplant of those rules to internal conflicts; rather, the general essence of those rules, and not the detailed regulation they may contain, has become applicable to internal conflicts."

[140] *Akayesu* Trial Judgement, paras 610, 616 [original footnotes omitted] [emphasis in the original]. A series of other ICTR Trial Chamber decisions have followed this finding, although some have chosen to address the crime only on the basis of treaty law. *See*, for example, *Prosecutor v. Musema*, ICTR-96-13-T, Judgement and Sentence

> Any obstacle to the application of Article 3 [of the Statute] to crimes committed during an international armed conflict is nevertheless overcome if the actual violations included in Article 3, sub-paragraphs (a) to (h), are found to be part of customary international law applicable in an identical fashion to both internal and international conflicts.[141]

64. To this end, the Appeals Chamber found that:

> It has been observed that 'even though the rules applicable in internal armed conflict still lag behind the law that applies in international conflict, the establishment and work of the ad hoc Tribunals has significantly contributed to diminishing the relevance of the distinction between the two types of conflict'. The distinction [between the rules applicable in internal armed conflict and the rules applicable in international conflict] is no longer of great relevance in relation to the crimes articulated in Article 3 of the Statute *as these crimes are prohibited in all conflicts*. Crimes during internal armed conflict form part of the broader category of crimes during international armed conflict.[142]

65. The Appeals Chamber has held that both Common Article 3 and Article 4 of Additional Protocol II define the fundamental guarantees of humane treatment: "All the fundamental guarantees share a similar character. In recognizing them as fundamental, the international community set a benchmark for the minimum standards for the conduct of armed conflict."[143] The ICTY Appeals Chamber has stated with regard to the crimes under Common Article 3 that "[i]t is logical that this minimum be applicable to international conflicts as the substance of these core rules is identical. In the Appeals Chamber's view, something which is prohibited in internal conflicts is necessarily outlawed in an international conflict where the scope of the rules is broader".[144] In light of the Appeals Chamber's finding, the Chamber is satisfied that this reasoning applies to both Common Article 3 and Article 4 of

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(TC), 27 January 2000, para. 240 [*Musema* Trial Judgement] and *Prosecutor v. Semanza*, ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003, para. 353 [*Semanza* Trial Judgement].

[141] *CDF* Appeal Decision on Nature of Armed Conflict, para. 21.

[142] *CDF* Appeal Decision on Nature of Armed Conflict, para. 25, citing Frits Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War. An Introduction to International Humanitarian Law* (Geneva: ICRC, 2001), p. 188; and, Rodney Dixon, Karim Khan and Richard May, eds., *Archbold International Criminal Courts Practice, Procedure and Evidence*, 3rd Ed, (London: Sweet & Maxwell, 2003), para. 11-26 [Archbold, International Criminal Courts] [emphasis added].

[143] *CDF* Appeal Decision on Child Recruitment, para. 28, citing *Prosecutor v. Norman*, SCSL-03-08-PT, Fourth Defence Preliminary Motion based on Lack of Jurisdiction (Child Recruitment): *Amicus Curiae* Brief of the United Nations Children's Fund (UNICEF) (TC), 21 January 2004, para. 65.

[144] *Celebici* Appeal Judgement, para. 150. *See also*: "[t]he Special Court Statute, just like the ICTR Statute before it, draws on Part II of Additional Protocol II entitled 'Humane Treatment' and its fundamental guarantees, as well as Common Article 3 to the Geneva Conventions in specifying the crimes falling within its jurisdiction. 'All the fundamental guarantees share a similar character. In recognizing them as fundamental, the international

Additional Protocol II.

66. The Chamber notes that the Accused are charged with two counts of "other serious violation of international humanitarian law" pursuant to Article 4 of the Statute.

67. With regard to the first of these, namely conscripting or enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities, the Appeals Chamber has already dismissed a Defence motion objecting to the jurisdiction of the Court on crimes under Article 4(c) of the Statute. The Appeals Chamber found that that the recruitment of child soldiers by way of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities did in fact constitute a crime under customary international law which entailed individual criminal responsibility prior to the time frame of the Indictment.[145] This finding was confirmed by the Appeals Chamber in the CDF Appeal Judgement and the AFRC Appeal Judgement.[146]

68. The second such offence in the RUF Indictment is the offence of intentionally directing attacks against peacekeepers. For reasons that are fully outlined below, the Trial Chamber is satisfied that this offence constituted a crime under customary international law which entailed individual criminal responsibility at the time of the alleged attacks.

69. Whilst Sierra Leone has ratified both the Geneva Conventions and the Additional Protocols, there is no national implementing legislation.[147] As the Chamber has found that these offences constituted crimes under customary international law at the time of their alleged commission, the Chamber no longer needs to consider this issue.

2.4. "Serious" Violations

70. In order for the Accused to incur liability under the Statute, any violation of

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community set a benchmark for the minimum standards for the conduct of armed conflict.'" (CDF Appeal Decision on Child Recruitment, para. 28) [original footnotes omitted].

[145] CDF Appeal Decision on Child Recruitment, paras 52-53. *See further* CDF Trial Judgement paras 184-197.

[146] *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgement (AC), 28 May 2008, para. 139 [CDF Appeal Judgement]; AFRC Appeal Judgement, para. 295.

[147] Sierra Leone acceded to the Geneva Conventions of 12 August 1949 on 10 June 1965 and to Additional Protocol II on 21 October 1986. The *Sierra Leone Act No 26 of 1959* entitled "*An Ordinance to enable effect to be given to certain International Conventions done at Geneva on the 12th day of August, 1949 and for purposes connected therewith*" is the only related legislation. However, this legislation predates Sierra Leone's accession to the Conventions and Additional Protocol II.

international humanitarian law must be a "serious" violation.

71. The Chamber is satisfied that all of the crimes charged in the Indictment qualify as serious violations of international humanitarian law. Crimes against humanity and violations of Common Article 3 to the Geneva Conventions and of Article 4(2) of Additional Protocol II ("war crimes") have all been held to be serious violations of international humanitarian law during a period prior to the temporal jurisdiction of this Tribunal.[148] The crimes listed under Article 4 of the Statute, "other serious violations of international humanitarian law", are serious violations of customary international humanitarian law by definition.

72. Further, the Chamber is of the view that for the actual violation to be serious, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim.[149] The Chamber, therefore, will make the determination as to the seriousness of the alleged violations in light of its findings of fact and law.

3. Law on the Crimes Charged

3.1. Introduction

73. The Indictment charges the Accused with eight counts of crimes against humanity, eight counts of war crimes and two counts of other serious violations of international humanitarian law. Proof of these crimes requires proof of both the underlying specific offence and the general requirements for the category of crimes of which the underlying offence forms a part.

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[148] Regarding Crimes against Humanity, see *Tadic* Trial Judgement, paras 622-623 (referring therein to *Tadic* Appeal Decision on Jurisdiction, para. 141); regarding Crimes under Common Article 3 to the Geneva Conventions, see *Prosecutor v. Blaskic*, IT-95-14-T, Judgement (TC), 3 March 2000, para. 176 [*Blaskic* Trial Judgement]. The ICTR Trial Chambers have made it clear that violations of Article 4(2) of Additional Protocol II are, by their very nature, violations of fundamental humanitarian guarantees and are thus serious: *Akayesu* Trial Judgement, para. 616; *Semanza* Trial Judgement, paras 370-371; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgement (TC), 21 May 1999, para. 184 [*Kayishema and Ruzindana* Trial Judgement]; *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999, para. 106 [*Rutaganda* Trial Judgement].

[149] *Tadic* Appeal Decision on Jurisdiction, para. 94. The ICTY Appeals Chamber held: "Thus, for instance, the fact of a combatant simply appropriating a loaf of bread in an occupied village would not amount to a 'serious violation of international humanitarian law' although it may be regarded as falling foul of the basic principle laid down in Article 46, paragraph 1, of the Hague Regulations (and the corresponding rule of customary international law) whereby 'private property must be respected' by any army occupying an enemy territory".

3.2. General Requirements

74. Consistent with our decision in the CDF Trial Judgement, the Chamber notes that the term "Accused" that is used in the enumeration of the general requirements for each category of crimes or any of the specific crimes under the Statute was chosen for purposes of convenience and should be understood in a broad sense.[150] The general requirements and the elements of the specific offences, including the appropriate mental elements therein, apply *mutatis mutandis* to the direct perpetrator of the crime as well as all those whose criminal responsibility may fall under Article 6(1) and (3) of the Statute.

3.2.1. Article 2: Crimes against Humanity

75. Article 2 of the Statute, entitled "Crimes against humanity", provides as follows:

> The Special Court shall have the power to prosecute persons who committed the following crimes 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;
> i. Other inhumane acts.

76. Based on established jurisprudence, we have held that the general requirements which must be proved to show the commission of a crime against humanity are as follows:

(i) There must be an attack;

(ii) The attack must be widespread or systematic;

(iii) The attack must be directed against any civilian population;

(iv) The acts of the Accused must be part of the attack; and

(v) The Accused knew or had reason to know that his or her acts constitute part of a widespread or systematic attack directed against any civilian population.

3.2.1.1. Attack

[150] CDF Trial Judgement, para. 109.

77. Consistent with our decision in the CDF Trial Judgement, the Chamber adopts the definition of attack as meaning a "campaign, operation or course of conduct".[151] In the context of a crime against humanity, an attack is not limited to the use of armed force, but also encompasses any mistreatment of the civilian population.[152] An attack can precede, outlast, or continue during an armed conflict and thus it may, but need not be part of an armed conflict.[153] In the Chamber's opinion, the distinction between an attack and an armed conflict reflects the position in customary international law that crimes against humanity may be committed in peace time and independent of an armed conflict.[154]

3.2.1.2. Widespread or systematic

78. It is now settled law that the requirement that the attack must be either widespread *or* systematic is disjunctive and not cumulative.[155] The term "widespread" refers to the large-scale nature of the attack and the number of victims, while the term "systematic" refers to the organised nature of the acts of violence and the improbability of their random occurrence.[156] The Chamber adopts the view that "[p]atterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of such systematic occurrence"[157] and further concurs with the ICTY Appeals Chamber in the *Kunarac et al.* case that:

> [T]he assessment of what constitutes a 'widespread' or 'systematic' attack is

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[151] *CDF* Trial Judgement, para. 111, citing *Prosecutor v. Brima, Kanu and Kamara*, SCSL-04-16-T, Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 31 March 2006, para. 42 [*AFRC* Rule 98 Decision]; *Prosecutor v. Naletilic and Martinovic*, IT98-34-T, Judgement (TC), 31 March 2003, para. 233 [*Naletilic and Martinovic* Trial Judgement]; *Akayesu* Trial Judgement, para. 581.

[152] *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1-A, Judgement (AC), 12 June 2002, para. 86 [*Kunarac et al.* Appeal Judgement]; *Prosecutor v. Limaj, Bala and Musliu*, IT-03-66-T, Judgement (TC), 30 November 2005, para. 182 [*Limaj et al.* Trial Judgement]; *Prosecutor v. Vasiljevic*, IT-98-32-T, Judgement (TC), 29 November 2002, paras 29 [*Vasiljevic* Trial Judgement].

[153] *Kunarac et al.* Appeal Judgement, para. 86; *Limaj et al.* Trial Judgement, para. 182; *Vasiljevic* Trial Judgement, para. 30; *Naletilic and Martinovic* Trial Judgement, para. 233.

[154] *CDF* Trial Judgement, para. 111, citing *Tadic* Appeal Judgement, para. 251; *Tadic* Appeal Decision on Jurisdiction, para. 141; *Kunarac et al.* Appeal Judgement, para. 86.

[155] *Limaj et al.* Trial Judgement, para. 183; *Kunarac et al.* Appeal Judgement, para. 97; *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgement (AC), 17 December 2004, para. 93 [*Kordic and Cerkez* Appeal Judgement]. The Chamber notes that, according to the ICTY Appeals Chamber, once it is convinced that either requirement is met, a Chamber is not obliged to consider whether the alternative qualifier is also satisfied: *Kunarac et al.* Appeal Judgement, para. 93.

[156] *CDF* Trial Judgement, para. 112. *See also Kunarac et al.* Appeal Judgement, para. 94; *Prosecutor v. Blaskic*, IT-95-14-A, Judgement (AC), 29 July 2004, para. 101 [*Blaskic* Appeal Judgement]; *Limaj et al.* Trial Judgement, para. 183.

[157] *CDF* Trial Judgement, para. 112; *Kunarac et al.* Appeal Judgement, para. 94; *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1-T, Judgement (TC), 22 February 2001, para. 429 [*Kunarac et al.* Trial Judgement].

> essentially a relative exercise in that it depends upon the civilian population which, allegedly, was being attacked. A Trial Chamber must therefore 'first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic'. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a 'widespread' or 'systematic' attack vis-à-vis this civilian population.[158]

79. The existence of a policy or plan, or that the crimes were supported by a policy or plan to carry them out, may be evidentially relevant to establish the widespread or systematic nature of the attack and that it was directed against a civilian population, but it is not a separate legal requirement of crimes against humanity.[159] Furthermore, the Chamber is of the view that customary international law does not presuppose a discriminatory or persecutory intent for all crimes against humanity.[160]

3.2.1.3. Directed against any civilian population

80. The attack must be directed against any civilian population. This means that the civilian population must "be the primary rather than an incidental target of the attack."[161] For this proposition, we again rely on the interpretation of the ICTY Appeals Chamber in *Kunarac et al.* that:

> [T]he expression 'directed against' is an expression which 'specifies that in the context of a crime against humanity the civilian population is the primary object of the attack'. In order to determine whether the attack may be said to have been so directed, the Trial Chamber will consider, *inter alia*, the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said

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[158] *Kunarac et al.* Appeal Judgement, para. 95 [original footnotes omitted].

[159] *Kunarac et al.* Appeal Judgement, para. 98, which also holds that: "neither the attack nor the acts of the accused needs to be supported by any form of 'policy' or 'plan' [...] It may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic (especially the latter) to show that there was in fact a policy or plan, but it may be possible to prove these things by reference to other matters."

[160] *Tadic* Appeal Judgement, para. 292. *See also Prosecutor v. Akayesu*, ICTR-96-4-A, Judgement (AC), 1 June 2001, para. 465 [*Akayesu* Appeal Judgement]: "[i]n the case at bench, the Tribunal was conferred jurisdiction over crimes against humanity (as they are known in customary international law), but solely 'when committed as part of a widespread or systematic attack against any civilian population' on certain discriminatory grounds; the crime in question is the one that falls within such a scope. Indeed, this narrows the scope of the jurisdiction, which introduces no additional element in the legal ingredients of the crime as these are known in customary international law."

[161] *CDF* Trial Judgement, para. 114; *Kunarac et al.* Appeal Judgement, para. 92.

> to have complied or attempted to comply with the precautionary requirements of the laws of war. To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war provide a benchmark against which the Chamber may assess the nature of the attack and the legality of the acts committed in its midst.[162]

81. The Chamber also adopts the view of the ICTY Appeals Chamber in the *Blaskic* case that there is an absolute prohibition against targeting civilians in customary international law.[163]

82. The Chamber is satisfied that customary international law, determined by reference to the laws of armed conflict, has established that the civilian population includes all of those persons who are not members of the armed forces or otherwise recognised as combatants.[164] A person who is *hors de combat* does not *prima facie* fall within this definition.[165] However, the Chamber concurs with the ICTY Appeals Chamber in the *Martic* case that where a person *hors de combat* is the victim of an act which objectively forms part of a broader attack directed against a civilian population, this act may amount to a crime against humanity.[166] Thus, persons *hors de combat* may form part of the civilian population for the purpose of crimes against humanity, provided that the remaining general requirements of Article 2 are satisfied in respect of the particular incident.

83. In order for a population to be considered "civilian", it must be predominantly civilian in nature; the presence of certain non-civilians in their midst does not change the character of the population.[167] In determining whether the presence of soldiers within a civilian population deprives it of its civilian character, the Chamber must examine, among other factors, the number of soldiers as well as their status.[168] The presence of members of resistance armed groups or former combatants who have laid down their arms, within a civilian population, does

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[162] *Kunarac et al.* Appeal Judgement, para. 91, adopted in *CDF* Trial Judgement, para. 114 [original footnotes omitted].
[163] *Blaskic* Appeal Judgement, para. 109.
[164] *Blaskic* Appeal Judgement, paras 110-113.
[165] *Prosecutor v. Martic*, IT-95-11-A, Judgement (AC), 8 October 2008, para. 302 [*Martic* Appeal Judgement].
[166] *Martic* Appeal Judgement, paras 308-309 and 313.
[167] *CDF* Appeal Judgement, para. 259; *Prosecutor v. Galic*, IT-98-29-A, Judgement (AC), 30 November 2006, para. 144 [*Galic* Appeal Judgement]; *Kordic and Cerkez* Appeal Judgement, para. 50; *Blaskic* Appeal Judgement, para. 113.
[168] *Blaskic* Appeal Judgement, para. 115; *Limaj et al.* Trial Judgement, para. 186.

not alter its civilian nature.[169]

84. The Chamber recognises that Article 2 of the Statute extends to "any" civilian population including, if a State takes part in the attack, that State's own population[170] and that there is no requirement that the victims are linked to any particular side.[171] The existence of an attack upon one side's civilian population would not justify or cancel out that side's attack upon the other's civilian population.[172]

85. The Chamber considers that "the use of the word 'population' does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack."[173] However, the targeting of a select group of civilians – for instance, the targeted killing of a number of political opponents – cannot satisfy the requirements of Article 2.[174] It would be sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian "population", rather than against a limited and randomly selected number of individuals.[175]

86. The Appeals Chamber has confirmed that perceived "collaborators" are accorded civilian status under international law.[176] The Chamber is of the opinion that persons accused of "collaborating" with the government or armed forces would only become legitimate military

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[169] *Blaskic* Appeal Judgement, para. 113, which states, at footnote 220, that "Common Article 3 of the Geneva Conventions provides that 'Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.' That these persons are protected in armed conflicts reflects a principle of customary international law."

[170] *Kunarac et al.* Trial Judgement, para. 423; *Tadic* Trial Judgement, para. 635.

[171] *Limaj et al.* Trial Judgement, para. 186; *Kunarac et al.* Trial Judgement, para. 423; *Vasiljevic* Trial Judgement, para. 33.

[172] *Kunarac et al.* Appeal Judgement, para. 87: "[...] when establishing whether there was an attack upon a particular civilian population, it is not relevant that the other side also committed atrocities against its opponent's civilian population. The existence of an attack from one side against the other side's civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side's forces were in fact targeting a civilian population as such. Each attack against the other's civilian population would be equally illegitimate and crimes committed as part of this attack could, all other conditions being met, amount to crimes against humanity." [original footnotes omitted]. *See also Martic* Appeal Judgement, para. 111.

[173] *Kunarac et al.* Appeal Judgement, para. 90; *Blaskic* Appeal Judgement, para. 105.

[174] *Limaj et al.* Trial Judgement, para. 187.

[175] *Kunarac et al.* Appeal Judgement, para. 90.

[176] CDF Appeal Judgement, para. 260.

targets if they were taking direct part in the hostilities. Indirectly supporting or failing to resist an attacking force is insufficient to constitute such participation. In addition, even if such civilians could be considered to have taken a direct part in hostilities, they would only qualify as legitimate military targets during the period of their direct participation.[177] If there is any doubt as to whether an individual is a civilian he should be presumed to be a civilian and cannot be attacked merely because he appears dubious.[178] When it comes to establishing civilian status for the purposes of a criminal prosecution, however, it is the Prosecution which bears the onus of doing so.[179]

87. The armed law enforcement agencies of a State are generally mandated only to protect and maintain the internal order of the State. Thus, as a general presumption and in the execution of their typical law enforcement duties, such forces are considered to be civilians for the purposes of international humanitarian law.[180] This same presumption will not exist for military police or gendarmerie that operate under the control of the military.[181] The Chamber notes that, in accordance with the provisions of the *Constitution* of 1991[182] and *The Police Act*[183] of 1964, the Sierra Leone Police operates under the control of the Minister of Internal Affairs, a civilian authority.

88. The Chamber is of the opinion that the status of police officers in a time of armed conflict must be determined on a case-by-case basis in light of an analysis of the particular

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[177] *Juan Carlos Abella v. Argentina*, Case 11.137, Report N° 55/97, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 271 (1997), paras 176-178, 189 and 328 [*Tablada* Case].

[178] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 U.N.T.S. 609 (entered into force 7 December 1978), Article 50(1) [Additional Protocol I]; Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law, Volume 1: Rules* (Cambridge: Cambridge University Press: 2005), pp. 23-24 [Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Volume I].

[179] *Blaskic* Appeal Judgement, para. 111.

[180] Yves Sandoz, Christophe Swinarski and Bruno Zimmerman, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: ICRC/Martinus Nijhoff Publishers, 1987), Additional Protocol I, Art. 43(3), paras 1682-1683 and Art. 59(3), paras 2277-2281 [ICRC Commentary on Additional Protocols].

[181] *See, inter alia, Prosecutor v. Oric*, IT-03-68-T, Judgement (TC), 30 June 2006, paras 187-188 and 215-221 [*Oric* Trial Judgement]; *Akayesu* Trial Judgement, paras 68-69; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgement (TC), 7 June 2001, paras 177 and 181-182 [*Bagilishema* Trial Judgement]; *Blaskic* Trial Judgement, paras 453-456.

[182] *The Constitution of Sierra Leone, 1991* (Act No. 6 of 1991) [Sierra Leone Constitution].

[183] *An Act to Consolidate and Amend the Law Relating to the Organisation, Discipline, Powers and Duties of the Police Force*, 4 June 1964, s. 2 [*The Police Act*].

facts.[184] A civilian police force, for instance, may be incorporated into the armed forces, which will cause the police to be classified as combatants instead of civilians. This incorporation may occur *de lege*, by way of a formal Act, or *de facto*.

3.2.1.4. The acts of the Accused must be part of the attack

89. The requirement that the acts of the Accused must be part of the attack is satisfied by the "commission of an act which, by its nature or consequences, is objectively part of the attack."[185] This is established if the alleged crimes were related to the attack on a civilian population, but need not have been committed in the midst of that attack.[186] A crime which is committed before or after the main attack or away from it could still, if sufficiently connected, be part of that attack. However, it must not be an isolated act. "A crime would be regarded as an 'isolated act' when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack."[187] Only the attack, not the individual acts, must be widespread or systematic.[188]

3.2.1.5. Mens rea (knowledge)

90. The last general requirement for establishing a crime against humanity is the knowledge that there is an attack on the civilian population and that the acts of the Accused are part thereof.[189] The Prosecution must show that the Accused either knew or had reason to know that his acts comprised part of the attack. Evidence of knowledge depends on the facts of a particular case and thus the manner in which this legal element may be proved may therefore vary from case to case.[190] The Accused needs to understand the overall context in which his acts took place,[191] but need not know the details of the attack or share the purpose or goal behind the attack.[192] The motives for the Accused's participation in the attack are irrelevant.[193] It is also

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[184] *CDF* Trial Judgement, para. 137, upheld by CDF Appeal Judgement, para. 261.
[185] *Kunarac et al.* Appeal Judgement, para. 99.
[186] *Kunarac et al.* Appeal Judgement, para. 100; *Limaj et al.* Trial Judgement, para. 189.
[187] *Kunarac et al.* Appeal Judgement, para. 100. *See also Tadic* Appeal Judgement, para. 271; *Limaj et al.* Trial Judgement, para. 189.
[188] *Kordic and Cerkez* Appeal Judgement, para. 94, referring to *Kunarac et al.* Appeal Judgement, para. 96 and *Blaskic* Appeal Judgement, para. 101.
[189] *See Kunarac et al.* Appeal Judgement, para. 102 referring to *Kunarac et al.* Trial Judgement, para. 434.
[190] *Blaskic* Appeal Judgement, para. 126.
[191] *Limaj et al.* Judgement, para. 190; *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-T, Judgement (TC), para. 185 [*Kordic and Cerkez* Trial Judgement].
[192] *Kunarac et al.* Appeal Judgement, paras 102-103.

irrelevant whether the Accused intended his acts to be directed against the targeted population or merely against his victim, as it is the attack, and not the acts of the Accused, which must be directed against the targeted population.[194]

3.2.2. Article 3: War Crimes

91. Article 3 of the Statute provides as follows:

> The Special Court shall have 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 shall 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. 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 civilized peoples;
> h. Threats to commit any of the foregoing acts.

92. The Appeals Chamber noted that "Article 3, sub-paragraphs (a) to (f), and (h) of the Special Court Statute are taken directly from Article 4(2) of Protocol II, while Article 3(g) mirrors Article 3(1)(d) of Common Article 3"[195] and are almost *verbatim* with Article 4 of the ICTR Statute.[196] This Chamber observes that all of the violations in sub-paragraphs (a), (c), and (e) are found under both Additional Protocol II and Common Article 3, while the violations under sub-paragraphs (b), (d), (f) and (h) are only found under Additional Protocol II.

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[193] *Kunarac et al.* Appeal Judgement, para. 103. The ICTY Appeals Chamber considered that "[a]t most, evidence that [acts were committed] for purely personal reasons could be indicative of a rebuttable assumption that he was not aware that his acts were part of that attack." *See also Tadic* Appeal Judgement, paras 248 and 252.

[194] *Kunarac et al.* Appeal Judgement, para. 103.

[195] *CDF* Appeal Decision on Nature of Armed Conflict, para. 24. *See* also *CDF* Appeal Decision on Child Recruitment, para. 28: "[t]he Special Court Statute, just like the ICTR Statute before it, draws on Part II of Additional Protocol II entitled 'Humane Treatment' and its fundamental guarantees, as well as Common Article 3 to the Geneva Conventions in specifying the crimes falling within its jurisdiction." [original footnote omitted]

[196] *CDF* Appeal Nature of the Armed Conflict, para. 20. A difference between the two is that, while Article 4 of the ICTR Statute states that "[t]hese violations shall include, but shall not be limited to", Article 3 of the Statute of the Special Court merely states that "[t]hese violations shall include".

93. The Chamber acknowledges that the general requirements which must be proved to show the commission of war crimes pursuant to Article 3 of the Statute are as follows:

(i) An armed conflict existed at the time of the alleged violation of Common Article 3 or Additional Protocol II;

(ii) There existed a nexus between the alleged violation and the armed conflict;

(iii) The victim was a person not taking direct part in the hostilities at the time of the alleged violation; and

(iv) The Accused knew or had reason to know that the person was not taking a direct part in the hostilities at the time of the act or omission.

3.2.2.1. The Existence of an Armed Conflict

94. The Chamber concludes that the application of Article 3 of the Statute requires that the alleged acts of the Accused be committed in the course of an armed conflict, and "it is immaterial whether the conflict is internal or international in nature."[197]

95. Relying on the ICTY Appeals Chamber in the *Tadic* case, the Chamber rules that under Common Article 3, "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State."[198] Therefore, the criteria for establishing the existence of an armed conflict are the intensity of the conflict and the organisation of the parties.[199] These criteria are used "solely for the purpose, *as a minimum*, of distinguishing an armed conflict from banditry, unorganised and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law".[200]

96. Guided by our reasoning in the CDF Trial Judgement, the Chamber observes that Additional Protocol II contains a stricter threshold for the establishment of an armed conflict than Common Article 3.[201] Article 1 of the Protocol provides in relevant parts:

> 1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts... which take place in the territory of

[197] *CDF* Trial Judgement, para. 123.
[198] *CDF* Trial Judgement, para. 124, citing *Tadic* Appeal Decision on Jurisdiction, para. 70.
[199] *Limaj et al.* Trial Judgement, paras 84, 89; *Tadic* Trial Judgement, para. 562.
[200] *Limaj et al.* Trial Judgement, paras 84, 89 citing *Tadic* Trial Judgement, para. 562 [emphasis added].
[201] *CDF* Trial Judgement, para. 126.

> a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.
>
> 2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

97. This Chamber is therefore satisfied that where the Prosecution has alleged an offence that exists only under Additional Protocol II, then the following conditions must be met in order to establish the element of armed conflict:

(i) An armed conflict took place in the territory of Sierra Leone between its armed forces and dissident armed forces or other organised armed groups; and

The dissident armed forces or other organised groups:

(ii) Were under responsible command;

(iii) Were able to exercise such control over a part of their territory as to enable them to carry out sustained and concerted military operations; and

(iv) Were able to implement Additional Protocol II.[202]

98. The applicable test for determining the existence of an armed conflict has already been discussed in paragraph 95 in the context of Common Article 3. The Chamber notes, therefore, that any armed conflict satisfying the higher threshold of the Additional Protocol II test would automatically satisfy the threshold under Common Article 3. The term "armed forces" is to be defined broadly.[203] The armed forces or groups must be under responsible command which implies a degree of organisation to enable them "to plan and carry out concerted military operations, and to impose discipline in the name of a *de facto* authority."[204] They must also be able to control a part of the territory of the country enabling them "to carry out sustained and concerted military operations and to apply Additional Protocol II."[205]

99. The Chamber is of the opinion that international humanitarian law applies from the

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[202] *Akayesu* Trial Judgement, para. 623. *See also Musema* Trial Judgement, para. 254; *Rutaganda* Trial Judgement, para. 95.
[203] *Akayesu* Trial Judgement, para. 625.
[204] *Akayesu* Trial Judgement, para. 626.
[205] *Akayesu* Trial Judgement, para. 626.

beginning of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached, or, in the case of internal conflicts, a peaceful settlement is achieved.[206] "Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there."[207]

3.2.2.2. Nexus

100. The Chamber reiterates its position that "what distinguishes a war crime from a purely domestic crime is that a war crime is shaped by or dependant upon the environment - the armed conflict - in which it is committed".[208] As to the precise nature of the nexus between the alleged violation and the armed conflict, the Chamber, consistent with the decisions of the Appeals Chambers of the ICTY and of the ICTR, rules that the nexus requirement is fulfilled if the alleged violation was closely related to the armed conflict.[209] Where the violation alleged has not occurred at a time and place in which fighting was actually taking place, the ICTY Appeals Chamber has held that "it would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict."[210] The crime "need not have been planned or supported by some form of policy" and the armed conflict "need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was

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[206] The term "hostilities" is not synonymous with the term "armed conflict." An armed conflict may continue to exist after the hostilities in an area have ceased. (*Prosecutor v. Halilovic*, IT-01-48-T, Judgement (TC), 16 November 2005, para. 32 and footnoted references [*Halilovic* Trial Judgement]).

[207] *Tadic* Appeal Decision on Jurisdiction, para. 70. *See also Kunarac et al.* Appeal Judgement, para. 64: "[f]urthermore, the Appeals Chamber considers that the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties."

[208] *CDF* Trial Judgement, para. 129, quoting *Kunarac et al.* Appeal Judgement, para. 58.

[209] *Prosecutor v. Rutaganda*, ICTR-96-3-A, Judgement (AC), 26 May 2003, paras 569-570 [*Rutaganda* Appeal Judgement], and *Kunarac et al.* Appeal Judgement, paras 58-59. In paragraph 25 of the *CDF* Appeal Decision on Nature of Armed Conflict, the Appeals Chamber stated that: "[i]n respect of Article 3, therefore, the Court need only be satisfied that an armed conflict existed and that the alleged violations were related to the armed conflict." In the view of the Chamber, the requirement that the alleged violations were *closely* related to the armed conflict reflects the jurisprudence of the *Ad Hoc* Tribunals: *see Kunarac et al.* Appeal Judgement, paras 55 and 57-59; *Tadic* Appeal Decision on Jurisdiction, paras 67 and 70. In addition, in the view of the Chamber, the stricter requirement better characterizes the distinguishing features of a war crime.

[210] *Kunarac et al.* Appeal Judgement, para. 57. Also cited in *Halilovic* Trial Judgement, para. 29.

committed or the purpose for which it was committed."[211] The nexus requirement is satisfied where the Accused acted in furtherance of or under the guise of the armed conflict.[212] "The expression 'under the guise of the armed conflict' does not mean simply 'at the same time as an armed conflict' and/or 'in any circumstances created in part by the armed conflict.'"[213]

101. The Chamber subscribes to the jurisprudence of the *Ad Hoc* Tribunals that the factors to be considered in determining whether or not the act in question was sufficiently related to the armed conflict include, *inter alia*: "the fact that the [Accused] is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the [Accused's] official duties".[214] It is also the law that "the determination of a close relationship between particular offences and an armed conflict will usually require consideration of several factors, not just one."[215]

3.2.2.3. Protected Persons

102. The Chamber acknowledges that Common Article 3 applies to "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause" while Additional Protocol II applies to "all persons who do not take a direct part or who have ceased to take part in hostilities". We hold that these phrases are so similar that they should, therefore, be treated as synonymous and be categorised as "all persons not taking direct part in the hostilities at the time of the alleged violation".[216] Similarly, collaborators or police officers

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[211] *Kunarac et al.* Appeal Judgement, para. 58. Also cited in *Halilovic* Trial Judgement, para. 29.
[212] *Kunarac et al.* Appeal Judgement, para. 58; *Rutaganda* Appeal Judgement, para. 570.
[213] *Rutaganda* Appeal Judgement, para. 570.
[214] *Kunarac et al.* Appeal Judgement, para. 59. The nexus does not imply the requirement that the perpetrator be related or linked to one of the parties to the conflict: *Akayesu* Appeal Judgement, paras 443-444.
[215] *Rutaganda* Appeal Judgement, para. 570. *See also Kunarac et al.* Appeal Judgement, para. 59.
[216] *CDF* Trial Judgement, para. 131, citing Common Article 3(1) of the Geneva Conventions of 1949. *See Akayesu* Trial Judgement, para. 629: "Common Article 3 is for the protection of 'persons taking no active part in the hostilities' (Common Article 3(1)), and Article 4 of Additional Protocol II is for the protection of, 'all persons who do not take a direct part or who have ceased to take part in hostilities'. These phrases are so similar that, for the Chamber's purposes, they may be treated as synonymous." *See also* Article 4(1) of Additional Protocol II: "[a]ll persons who do not take a direct part or who have ceased to take part in hostilities" *and also* Article 4(2) of Additional Protocol II: "the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever." *See also Semanza* Trial Judgement, para. 365 and footnoted references: "[i]n essence, both Common Article 3 and Additional Protocol II protect persons not taking an active part in the hostilities."

are protected persons for so long as they do not directly participate in hostilities.[217]

103. The Chamber further recalls that the test applied by the ICTY Trial Chamber in the *Tadic* case was whether, at the time of the alleged offence, the alleged victim of the offence was directly taking part in "those hostilities in the context of which the alleged offences are said to have been committed."[218] Adopting the position taken by the ICTY Trial Chamber in the *Tadic* Trial Judgement, this Chamber holds that it does not serve any useful purpose to embark upon an exhaustive definition of the categories of persons who may be said not to be taking a direct part in hostilities.

104. The Chamber observes that Article 13(3) of Additional Protocol II provides that civilians are immune from attack for as long as they do not take a direct part in hostilities.[219] The question of whether civilians have participated directly in hostilities has to be decided on the specific facts of each case and there must be a sufficient causal relationship between the act of participation and its immediate consequences.[220] The Chamber takes the view that the direct participation should be understood to mean "acts which by their nature or purpose, are intended to cause actual harm to the enemy personnel and material."[221]

105. The Chamber recognises that the status of the victim as a person not taking direct part in the hostilities is an element of the war crime.[222] This implies that the Prosecution must show that the *mens rea* of the Accused encompassed the fact that the victim was a person not taking direct part in the hostilities.[223]

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[217] *See also* discussion *supra* para. 88, concerning collaborators and police officers as civilians for the purpose of crimes against humanity.
[218] *Tadic* Trial Judgement, para. 615, referring to persons protected by Common Article 3.
[219] Additional Protocol II, Art. 13(3). *See also Tablada* Case, paras 177-178, 189, 328.
[220] ICRC Commentary on Additional Protocols, Additional Protocol II, Art. 13(3), para. 4787.
[221] Third Report on the Human Rights Situation in Colombia, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, 26 February 1999, para. 53. *See also* ICRC Commentary on Additional Protocols, Additional Protocol I, Art. 43(2), para. 1679: "Direct participation in hostilities implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and place where the activity takes place."
[222] *See Prosecutor v. Naletilic and Martinovic*, IT-98-34-A, Judgement (AC), 3 May 2006, para. 116: "[t]he fact that something is a jurisdictional prerequisite does not mean that it does not at the same time constitute an element of a crime." [*Naletilic and Martinovic* Appeal Judgement].
[223] *Halilovic* Trial Judgement, para. 36, concerning murder pursuant to Common Article 3. "In this respect, the Trial Chamber notes that the knowledge of the status of the victims is one aspect of the *mens rea* that needs to be proven for the conviction on any Article 3 charge based on Common Article 3." (*Halilovic* Trial Judgement, fn 83).

3.2.3. Article 4: Other Serious Violations of International Humanitarian Law

106. Article 4 of the Statute states in relevant part as follows:

> The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law: [...]
>
> a. [...]
>
> 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.

107. The Chamber reiterates its position that the general requirements which must be proved to establish the commission of an other serious violation of international humanitarian law are as follows:

(i) An armed conflict existed at the time of the alleged offence; and

(ii) There existed a nexus between the alleged offence and the armed conflict.[224]

108. These two elements have already been discussed in detail above in relation to the general requirements under Article 3 of the Statute.

109. The Indictment charges the Accused with crimes under Article 4(c) of the Statute (Enlistment of Child Soldiers). Recognising that the prohibition against enlistment of child soldiers has its foundation in Article 4(3)(c) of Additional Protocol II, the Chamber holds that the definition of armed conflict under Additional Protocol II should be applied as outlined above.[225] Although the offence of attacking peacekeeping personnel or objects is not prohibited under either Common Article 3 or Additional Protocol II, the Chamber will apply the higher threshold that is applicable under Additional Protocol II.

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[224] *CDF* Trial Judgement, para. 138.

[225] Article 4(3)(c) of Additional Protocol II provides that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities." While Article 4 of the Statute uses slightly different terminology, the Chamber is satisfied that this is the origin of the prohibition.

3.3. Specific Offences

3.3.1. Acts of Terrorism (Count 1)

110. The Indictment charges the Accused under Count 1 with acts of terrorism as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(d) of the Statute. This Count relates to the Accused's alleged responsibility for the crimes set forth in paragraphs 45 through 82 and charged in Counts 3 through 14, "as part of a campaign to terrorise the civilian population of the Republic of Sierra Leone."[226]

111. The prohibition against acts of terrorism in Article 3(d) of the Statute is taken from Article 4(2)(d) of Additional Protocol II which prohibits acts of terrorism as a violation of the "fundamental guarantees" of humane treatment under the Additional Protocol.[227] Article 13(2) of Additional Protocol II is a narrower derivative of Article 4(2)(d).[228] Relying on the reasoning in the CDF Appeal Judgement, this Chamber considers that the intention of the parties was to interpret Count 1 as being a charge under Article 13(2) of Additional Protocol II.[229]

112. The Chamber adopts with the ICTY Appeals Chamber in *Galic* which ruled that the prohibition of terror against the civilian population was a part of customary international law from at least the time it was included in those treaties[230] and that the offence gave rise to individual criminal responsibility pursuant to customary international law.[231]

113. In the Chamber's view, the specific elements of crime of acts of terrorism can be described as follows:

(i) Acts or threats of violence;

(ii) The Accused wilfully made the civilian population or individual civilians not taking direct part in hostilities the objects of those acts or threats of violence; and

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[226] Indictment, para. 44.
[227] This prohibition was, in turn, based on Article 33 of Geneva Convention IV which prohibited "all measures of intimidation or of terrorism" of or against protected persons.
[228] *CDF* Appeal Judgement, paras 346-348. This same offence is also prohibited in Article 51(2) of Additional Protocol I.
[229] *CDF* Appeal Judgement, para. 349.
[230] *Galic* Appeal Judgement, paras 87-90.
[231] *Galic* Appeal Judgement, paras 93-98. Justice Schomburg dissented on this finding and concluded that there is no basis to find that this act was penalised beyond any doubt under customary international criminal law at the relevant time, *see* para. 2 of the Separate and Partially Dissenting Opinion of Judge Schomburg.

(iii) The acts or threats of violence were carried out with the specific intent of spreading terror among the civilian population.[232]

114. The first element describes the *actus reus* of the offence. The offence includes not only acts or threats of violence committed against protected persons, but also "acts directed against installations which would cause victims terror as a side-effect."[233] The Chamber is of the opinion that the rationale is clearly that of protecting persons from being subjected to acts of terrorism by whatever means.

115. Acts of terrorism may be "established by acts or threats of violence independent of whether such acts or threats of violence satisfy the elements of any other criminal offence."[234] The Appeals Chamber clarified that acts of burning are capable of spreading terror even though they do not satisfy the elements of pillage.[235] Conduct that is adequately pleaded in the Indictment will be considered under this offence, even if such conduct does not satisfy the elements of any other crimes charged in the Indictment.[236]

116. The Chamber recalls that the ICTY Appeals Chamber in *Galic* held:

> The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern [...] is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population.[237]

117. The Appeals Chamber has stated that while "actual terrorisation of the civilian population is not an element of the crime, the acts or threats of violence must be such that they are at the very least capable of spreading terror" which is to "be judged on a case-by-case basis within the particular context involved."[238] Terror is to be understood as the causing of

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[232] *CDF* Appeal Judgement, para. 350.
[233] ICRC Commentary on Additional Protocols, Additional Protocol II, Art. 4(2)(c), para. 4538, endorsed by the Appeals Chamber in *CDF* Appeal Judgement, para. 351.
[234] *CDF* Appeal Judgement, paras 352 and 359.
[235] *CDF* Appeal Judgement, para. 359.
[236] *CDF* Appeal Judgement, paras 362-364.
[237] *Galic* Appeal Judgement, para. 102 [original footnotes omitted]. This position was endorsed by the Appeals Chamber in *CDF* Appeal Judgement, para. 351.
[238] *CDF* Appeal Judgement, para. 352. *See also Galic* Appeal Judgement, paras 103-104 and *Galic* Trial Judgement, para. 134 in which the majority of the ICTY Chambers held that actual terrorisation of the civilian population is not a required element of the offence based on the rejection of attempts in the *travaux préparatoires* to Additional Protocol I to replace the intent to terrorise with actual terror.

extreme fear.[239] The Chamber is of the view that the Prosecution is not required to prove that the act or threat caused death or serious injury to body or health within the civilian population.[240]

118. The Chamber notes that the second element requires that the Accused "wilfully" made the civilians the object of an act or threat of violence. The Appeals Chamber has held that this "requires the Prosecution to prove that an accused acted consciously and with intent or recklessness in making the civilian population or individual civilians the object of an act or threat of violence. Negligence, on the other hand, is not enough."[241]

119. The third element of the offence of acts of terrorism is the specific intent to spread terror amongst the civilian population. The Chamber emphasises that the Prosecution must prove not only that the perpetrators of the acts or threats of violence "accepted the likelihood that terror would result from their illegal acts or threats", but also that this was the result specifically intended.[242]

120. The Chamber acknowledges that civilian populations are usually frightened by war and that legitimate military actions may have a consequence of terrorising civilian populations. This offence is not concerned with these types of terror: it is meant to criminalise acts or threats that are specifically undertaken for the purpose of spreading terror in the protected population.[243]

121. The specific intent to spread terror need not be the only purpose behind the act or threat. The ICTY Appeals Chamber clarified in *Galic* that:

> [T]he purpose of the unlawful acts or threats to commit such unlawful acts need not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats,

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[239] *CDF* Appeal Judgement, para. 352.
[240] This additional requirement was included by the ICTY Trial Chamber in the *D. Milosevic* case (*Prosecutor v. Dragomir Milosevic*, IT-98-29/1-T, Judgement (TC), 12 December 2007, paras 876 and 880 [*D. Milosevic* Trial Judgement]). This Chamber has considered the relevant portions of the *CDF* Appeal Judgement and the *Galic* Appeal Judgement and is satisfied that this is not a required element of the offence. *See* CDF Appeal Judgement, paras 350-352; *Galic* Appeal Judgement, paras 102.
[241] *CDF* Appeal Judgement, para. 355.
[242] *CDF* Appeal Judgement, para. 356, citing *Prosecutor v. Galic*, IT-98-29-T, Judgement (TC), 5 December 2003, para. 136 [*Galic* Trial Judgement]. *See also Galic* Appeal Judgement, para. 104.
[243] *See Galic* Appeal Judgement, para. 103.

that is from their nature, manner, timing and duration.[244]

3.3.2. Collective Punishments (Count 2)

122. The Indictment under Count 2 charges the Accused with the offence of collective punishments as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(b) of the Statute. This Count relates to the Accused's alleged responsibility for the crimes set forth in paragraphs 45 through 82 and charged in Counts 3 through 14 committed in order "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."[245]

123. The Chamber recalls that the prohibition against collective punishments in Article 3(b) of the Statute is derived from Article 4(2)(b) of Additional Protocol II, which is in turn based on the first paragraph of Article 33 of the Fourth Geneva Convention.

124. The Appeals Chamber has held that:

> The prohibition of collective punishments embodies an elementary principle of humanity that penal liability is personal in nature. Restrictive interpretations of collective punishments must be avoided because the prohibition of this crime is one of the fundamental guarantees of humane treatment. The prohibition on collective punishments must be understood in its broadest sense so as to include not only penalties imposed during normal judicial processes, such as sentences rendered after due process of law, but also any other kind of sanction such as a fine, confinement or a loss of property or rights.[246]

125. The Chamber observes that the prohibition on collective punishments has been included in conventions on international humanitarian law since 1899[247] and was relied on by the ICTY Trial Chamber in *Martic* to find that the prohibition on reprisals is also part of

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[244] *Galic* Appeal Judgement, para. 104. This was endorsed by the Appeals Chamber in the *CDF* Appeal Judgement, para. 357.

[245] Indictment, para. 44.

[246] *CDF* Appeal Judgement, para. 222 [original footnotes omitted].

[247] *See* Article 50 of the Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899 [The Hague Regulations, 1899]; Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, Art. 50 [The Hague Regulations, 1907]; Article 33 of Geneva Convention IV; Article 87 of Geneva Convention III; Article 75(2)(d) of Additional Protocol I; and Article 4(2)(b) of Additional Protocol II. *See also* Article 75(4)(b) of Additional Protocol I and Article 6(2)(b) of Additional Protocol II which provide that no one shall be convicted of an offence except on the basis of individual penal responsibility.

customary international law.[248] In light of the above, the Chamber is of the opinion that collective punishments are prohibited at customary international law and entail individual criminal responsibility.[249]

126. The Appeals Chamber has clarified that the correct definition of collective punishments is:

> (i) The indiscriminate punishment imposed collectively on persons for omissions or acts for which some or none of them may or may not have been responsible; and
>
> (ii) The Accused specifically intended to punish collectively.[250]

127. The Appeals Chamber has emphasised that the *mens rea* element of collective punishments, that is the specific intent to punish collectively, is the critical difference between the crime of collective punishments and the targeting of protected persons or objects. Victims of war crimes or crimes against humanity may be targeted because of *who they are perceived to be*, but victims of collective punishments are targeted because of *something they are perceived to have done*.[251]

128. Conduct that is adequately pleaded in the Indictment will be considered under this offence, even if such conduct does not satisfy the elements of any other crimes charged in the Indictment.[252]

3.3.3. Extermination (Count 3)

129. The Indictment charges the Accused under Count 3 with extermination as a crime against humanity. This Count, like Counts 4 and 5 described below, relates to the Accused's alleged responsibility for the unlawful killings by the AFRC/RUF resulting in the death of civilians in locations in Bo District, Kenema District, Kono District, Kailahun District,

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[248] *Prosecutor v. Martic*, IT-95-11-R61, Decision (TC), 8 March 1996. The Chamber found that the argument that the prohibition of reprisals against civilians in non-international armed conflicts is part of customary international law is "strengthened by the inclusion of the prohibition of 'collective punishments' in paragraph 2(b) of Article 4 of [Additional] Protocol II."

[249] For further support for the status of the offence of collective punishments at customary international law, see supporting references in *CDF* Trial Judgement, fn 222.

[250] *CDF* Appeal Judgement, para. 224.

[251] *CDF* Appeal Judgement, para. 223.

[252] *CDF* Appeal Judgement, paras 362-364.

Koinadugu District, Bombali District, Freetown and the Western Area and Port Loko District between about May 1997 and April 1999.[253]

130. The Chamber recognises that the crime of extermination as a crime against humanity is prohibited at customary international law and entails individual criminal responsibility.[254] The crime of extermination shares the same core elements of murder as a crime against humanity but has the additional requirement that the killings occur on a large or massive scale.[255] The Accused's participation may be remote or indirect and the killing may be accomplished through any means, including by inflicting conditions of life calculated to bring about the destruction of part of a population.[256]

131. In the Chamber's view, the specific elements of the offence of extermination are as follows:

(i) The acts or omissions of the Accused directly or indirectly led to the death of persons on a massive scale;

(ii) The Accused intended to either kill on a massive scale or to cause serious bodily harm in the reasonable knowledge that it would likely result in death on a massive scale.

132. The *actus reus* of the offence of extermination consists of acts or omissions, which directly or indirectly lead to the death of a large number of persons.[257] The requirement of a large or mass number of killings does not suggest a numerical minimum or threshold.[258] The Chamber agrees that the requirement of massiveness has to be determined "on a case-by-case analysis of all relevant factors"[259] and can be established "on an accumulation of separate and

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[253] Indictment, paras 45-53.

[254] *Prosecutor v. Krstic*, IT-98-33-T, Judgement (TC), 2 August 2001, para. 492, [*Krstic* Trial Judgement]. See also: *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, para. 518 [*Ntakirutimana* Appeal Judgement].

[255] *Ntakirutimana* Appeal Judgement, para. 542; *Prosecutor v. Brdjanin*, IT-99-36-T, Judgement (TC), 1 September 2004, para. 388 [*Brdjanin* Trial Judgement].

[256] *Brdjanin* Trial Judgement, para. 389; *Krstic* Trial Judgement, para. 498; *Kayishema and Ruzindana* Trial Judgement, paras 146-147.

[257] *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Judgement (TC), 17 January 2005, para. 573 [*Blagojevic and Jokic* Trial Judgement].

[258] *Prosecutor v. Brdjanin*, IT-99-36-A, Judgement (AC), 3 April 2007, para. 471 [*Brdjanin* Appeal Judgement]; *Prosecutor v. Stakic*, IT-97-24-A, Judgement (AC), 22 March 2006, para. 260, [*Stakic* Appeal Judgement]; *Ntakirutimana* Appeal Judgement, para. 516 and supporting footnotes.

[259] *Prosecutor v. Stakic*, IT-97-24-T, Judgement (TC) 31 July 2003, para. 640 [*Stakic* Trial Judgement].

unrelated incidents, meaning on an aggregated basis."[260] Further, the Prosecution need only establish that mass killings occurred; a precise description or the name of the victims is not an element of the crime.[261]

133. In the crime of extermination, there is no requirement to establish that there was "[a] vast scheme of collective murder" or knowledge of such a scheme.[262] The Prosecution need not prove that the Accused had the authority or the capacity to be instrumental in the killings of a large number of people.[263]

134. The Chamber adopts the definition of the *mens rea* required for the crime of extermination of the ICTR and ICTY Appeals Chambers:

> The *mens rea* required for extermination is that the accused intended, by his acts or omissions, either killing on a large scale, or the subjection of a widespread number of people, or the systematic subjection of a number of people, to conditions of living that would lead to their deaths.

135. There is no requirement that the Accused intended to destroy a particular group of individuals[264] or that he intended to kill a certain number of victims.[265]

3.3.4. Murder (Counts 4 and 16)

136. The Indictment charges the Accused under Counts 4 and 16 with murder as a crime against humanity. The Indictment also charges the Accused in Counts 5 and 17 with murder as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(a) of the Statute. Counts 4 and 5 relate to the Accused's alleged responsibility for unlawful killings as outlined above under Count 3. Counts 16 and 17, in contrast, relate to the Accused's alleged responsibility for unlawful killings of UNAMSIL peacekeepers in Bombali District, Tonkolili District and Port Loko District between about 15 April 2000 and 15 September 2000.[266] While Counts 4 and 5 and Counts 16 and 17, respectively, reference the same underlying facts, the law applicable to murder as a crime against humanity and as a

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[260] *Brdjanin* Trial Judgement, para. 391; *Prosecutor v. Martic*, IT-95-11-T, Judgement (TC), 12 June 2007, para. 63 [*Martic* Trial Judgement].
[261] *Ntakirutimana* Appeal Judgement, paras 518 and 521.
[262] *Stakic* Appeal Judgement, para. 258; *Blagojevic and Jokic* Trial Judgement, para. 576.
[263] *Ntakirutimana* Appeal Judgement, paras 538-539.
[264] *Stakic* Trial Judgement, para. 639; *Vasiljevic* Trial Judgement, para. 227; *Krstic* Trial Judgement, para. 500.
[265] *Stakic* Appeal Judgement, paras 260-261.

serious violation of Common Article 3 and Additional Protocol II will be dealt with separately.

137. The Chamber observes that the crime of murder as a crime against humanity is a well-recognised and defined crime under customary international law that entails individual criminal responsibility.[267]

138. In addition to the general (*chapeau*) requirements of establishing a crime against humanity, the specific elements of the offence of murder as a crime against humanity are:

(i) The death of one or more persons;

(ii) The death of the person(s) was caused by an act or omission of the Accused; and

(iii) The Accused intended to either kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.[268]

139. The Chamber takes the view that to establish the *actus reus* of murder, the Prosecution must establish beyond reasonable doubt that the Accused substantially contributed to the death of a person.[269] Murder may be proven beyond reasonable doubt without requiring proof that the dead body of that person has been recovered. "[T]he fact of a victim's death can be inferred circumstantially from all of the evidence presented to the Trial Chamber."[270] In addition, the Prosecution must prove that the victim or victims died as a result of acts or omissions of the Accused.[271]

140. Consistent with established jurisprudence, the Chamber reiterates that the *mens rea* of murder can be established by either the intention to kill or the intention to cause serious bodily harm in the reasonable knowledge that it would likely result in death. This *mens rea* may

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[266] Indictment, para. 83 and RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 45.

[267] The crime of murder is criminalised in every domestic system and it has been prosecuted as a crime against humanity on numerous occasions before the *Ad Hoc* Tribunals with general agreement as to the elements: see, for example, *Kordic and Cerkez* Appeal Judgement, para. 113; *Vasiljevic* Trial Judgement, para. 205; *Krstic* Trial Judgement, para. 485; *Blaskic* Trial Judgement, para. 217; *Rutaganda* Trial Judgement, para. 80; *Akayesu* Trial Judgement, para. 589.

[268] *CDF* Trial Judgement, para. 143; *Kordic and Cerkez* Trial Judgement, para. 236. *See also Prosecutor v Kvocka, Kos, Radic and Zigic*, IT-98-30/1-A, Judgement (AC), 28 February 2005, para. 261 [*Kvocka et al.* Appeal Judgement].

[269] *Oric* Trial Judgement, para. 347; *Brdjanin* Trial Judgement, para. 382; *Celebici* Trial Judgement, para. 424.

[270] *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement (TC), 15 March 2002, para. 326 [*Krnojelac* Trial Judgement]; *Kvocka et al.* Appeal Judgement, para. 260. *See also Tadic* Trial Judgement, para. 240.

[271] *Kvocka et al.* Appeal Judgement, para. 260, citing *Krnojelac* Trial Judgement, paras 326-327; *Tadic* Trial Judgement, para. 240.

be satisfied by recklessness, but not by proof of negligence or gross negligence.[272] Proof of premeditation is not required.[273]

3.3.5. Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Murder (Counts 5 and 17)

141. The Chamber notes that the Indictment charges the Accused under Counts 5 and 17 with "violence to life, health and physical or mental well-being of persons, in particular murder", as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute. The Chamber has analysed this offence as murder, as the category of 'violence to life and person' does not exist as an independent offence in customary international law.[274]

142. The Chamber takes the view that the elements of the offence of murder as a serious violation of Common Article 3 and Additional Protocol II are the same as for murder as a crime against humanity,[275] except for the general elements outlined above for crimes of this type. The constitutive elements are as follows:

(i) The death of one or more persons;

(ii) The death of the person(s) was caused by an act or omission of the Accused; and

(iii) The Accused intended to either kill or to cause serious bodily harm in the

[272] *Brdjanin* Trial Judgement, para. 386; *Stakic* Trial Judgement, para. 587; *Celebici* Trial Judgement, paras 437-439. This finding was made in the context of murder as a war crime in the *Celebici* and *Stakic* Trial Judgements and then was extended to murder as a crime against humanity in the *Brdjanin* Trial Judgement on the basis that the constitutive elements of both crimes are the same. *See also Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-T, Judgement (TC), 14 January 2000, para. 561 [*Kupreskic et al.* Trial Judgement].

[273] *Oric* Trial Judgement, para. 348; *Brdjanin* Trial Judgement, para. 386; *Kordic and Cerkez* Trial Judgement, para. 235.

[274] *Vasiljevic* Trial Judgement, para. 195: "Both 'life' and the 'person' are protected in various ways by international humanitarian law. Some infringements upon each of these protected interests are regarded as criminal under customary international law. It is so, for instance, of murder, cruel treatment, and torture. But not every violation of those protected interests has been criminalised, and those that have, as with the three offences just mentioned, have usually been given a definition so that both the individual who commits the act and the court called upon to judge his conduct are able to determine the nature and consequences of his acts [...]" *See also* para. 203: "In the absence of any clear indication in the practice of states as to what the definition of the offence of 'violence to life and person' identified in the Statute may be under customary law, the Trial Chamber is not satisfied that such an offence giving rise to individual criminal responsibility exists under that body of law." [original footnote omitted].

[275] *Brdjanin* Trial Judgement, para. 380; *Vasiljevic* Trial Judgement, para. 205; *Krnojelac* Trial Judgement, para. 323: "[i]t is clear from the jurisprudence of the Tribunal that the elements of the offence of murder are the same under both Article 3 and Article 5 of the Statute. These elements have been expressed slightly differently, but those slight variations in expression have not changed the essential elements of the offence." [original footnote omitted].

reasonable knowledge that it would likely result in death.[276]

3.3.6. Rape (Count 6)

143. The Indictment charges the Accused in Count 6 with rape as a crime against humanity under Article 2 of the Statute. This Count relates to the Accused's alleged responsibility for the rapes of women and girls in Kono District, Koinadugu District, Bombali District, Kailahun District, Freetown and the Western Area and Port Loko District in different time periods relevant to the Indictment.[277]

144. This Chamber opines that the offence of rape has long been prohibited as a war crime in international humanitarian law.[278] It is also prohibited as a crime against humanity in the Allied Control Council Law No. 10[279] and in the Statutes of the ICTY,[280] the ICTR[281] and the ICC.[282] The status of rape as an offence under customary international law entailing individual criminal responsibility has been reaffirmed before the *Ad Hoc* tribunals.[283] Indeed, the ICTY Trial Chamber in *Kunarac* declared that "[r]ape is one of the worst sufferings a human being can inflict upon another."[284]

145. Thus, the Chamber has held that the constitutive elements of rape are as follows:

(i) The Accused invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the Accused with a sexual organ, or of the anal or genital opening of the victim

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[276] *CDF* Trial Judgement, para. 146; *Kvocka et al.* Appeal Judgement, para. 261; *Celebici* Appeal Judgement, para. 423.
[277] Indictment, paras 54-60.
[278] The Lieber Code of 1863 listed rape as a serious war crime that merited the death penalty in Articles 44 and 47. (*Instructions for the Government of the United States in the Field by Order of the Secretary of War*, Washington, D.C., General Orders No. 100, 24 April 1863 [Lieber Code]). Rape was implicitly prohibited in Article 46 of the 1907 Hague Convention (IV) which provided for the protection of family honour and rights. Rape is also explicitly prohibited in Article 27 of Geneva Convention IV, Article 76(1) of Additional Protocol I and Article 4(2)(e) of Additional Protocol II.
[279] Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, Allied Control Council Law No. 10, 20 December 1945, Official Gazette of the Control Council for Germany, No. 3, 31 January 1946, Art. II.1(c) [Control Council Law No. 10].
[280] Article 5(g) of the ICTY Statute.
[281] Article 3(g) of the ICTR Statute.
[282] Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90 (entered into force July 1, 2002), Art. 7(1)(g) [ICC Statute].
[283] *Kvocka et al.* Appeal Judgement, para. 395; *Furundzija* Trial Judgement, paras 165-169; *Celebici* Trial Judgement, paras 476-477. *See also*: UN SC Res. 1820 (2008), 19 June 2008, para. 4: "rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide[...]"
[284] *Kunarac et al.* Trial Judgement, para. 655.

with any object or any other part of the body;

(ii) The invasion was committed 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 another person or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent;[285]

(iii) The Accused intended to effect the sexual penetration or acted in the reasonable knowledge that this was likely to occur; and

(iv) The Accused knew or had reason to know that the victim did not consent.[286]

146. The first element of the *actus reus* defines the type of invasion that is required to constitute the offence of rape and covers two types of penetration, however slight. The first part of the provision refers to the penetration of any part of the body of either the victim or the Accused with a sexual organ. The "any part of the body" in this part includes genital, anal or oral penetration.[287] The second part of the provision refers to the penetration of the genital or anal opening of the victim with any object or any other part of the body. This part is meant to cover penetration with something other than a sexual organ which could include either other body parts or any other object.[288] This definition of invasion is broad enough to be gender neutral as both men and women can be victims of rape.[289]

147. The second element of the *actus reus* of rape refers to the circumstances which would render the sexual act in the first element criminal. The essence of this element is that it describes those circumstances in which the person could not be said to have voluntarily and genuinely consented to the act.[290] The use or threat of force provides clear evidence of non-consent, but it is not required.[291] The ICTY Appeals Chamber has emphasised that the circumstances "that prevail in most cases charged as either war crimes or crimes against humanity will be almost universally coercive. That is to say, true consent will not be

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[285] International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000), Art. 7(1)(g) and Art. 8(2)(b)(xxii) [ICC Elements of Crimes].
[286] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 21-22.
[287] *Furundzija* Trial Judgement, paras 183-185. Para. 184: "[F]orced oral sex can be just as humiliating and traumatic for a victim as vaginal or anal penetration."
[288] *Furundzija* Trial Judgement, para. 185.
[289] ICC Elements of Crimes, fn 50.
[290] *Kunarac et al.* Appeal Judgement, para. 129; *Kunarac et al.* Trial Judgement, paras 457-459.
[291] *Kunarac et al.* Appeal Judgement, para. 129.

possible."[292]

148. The last part of this element refers to those situations where, even in the absence of force or coercion, a person cannot be said to genuinely have consented to the act. A person may not, for instance, be capable of genuinely consenting if he or she is too young, under the influence of some substance, or suffering from an illness or disability.[293]

149. The Chamber observes that the very specific circumstances of an armed conflict where rapes on a large scale are alleged to have occurred, coupled with the social stigma which is borne by victims of rape in certain societies, render the restrictive test set out in the elements of the crime difficult to satisfy. Circumstantial evidence may therefore be used to demonstrate the *actus reus* of rape.[294]

150. The *mens rea* requirements for the offence of rape are that the invasion was intentional and that it was done in the knowledge that the victim was not consenting.

151. The Chamber draws attention to the principles regarding inferences that cannot be drawn from evidence adduced in cases of sexual assault that are set out in Rule 96 of the Rules.

3.3.7. Sexual Slavery and any other Form of Sexual Violence (Count 7)

152. The Indictment in Count 7 charges the Accused with sexual slavery and any other form of sexual violence as a crime against humanity under Article 2 of the Statute. This Count relates to the Accused's alleged responsibility for the abduction and use as sexual slaves of women and girls in Kono District, Koinadugu District, Bombali District, Kailahun District, Freetown and the Western Area and Port Loko District. The Accused are also alleged to be responsible for the subjection of women and girls to other forms of sexual violence in Koinadugu District, Bombali District, Freetown and the Western Area and Port Loko District. All of the allegations are said to have occurred in different time periods relevant to the Indictment.[295]

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[292] *Kunarac et al.* Appeal Judgement, para. 130.
[293] *See*, for example, ICC Elements of Crimes, fn 51.
[294] *See Prosecutor v. Muhimana*, ICTR-95-1B-A, Judgement (AC), 21 May 2007, para. 49 [*Muhimana* Appeal Judgement]; *Prosecutor v. Gacumbitsi*, ICTR-01-64-A, Judgement (AC), 7 July 2006, para. 115 [*Gacumbitsi* Appeal Judgement].
[295] Indictment, paras 54-60.

153. As the Chamber has held that Count 7 of the Indictment is bad for duplicity and that the appropriate remedy is to proceed on the basis that the offence of sexual slavery is properly charged within Count 7 and to strike out the charge of "any other form of sexual violence, the Chamber will here consider only the elements of the offence of "sexual slavery".[296]

154. The specific offence of sexual slavery was included for the first time as a war crime and a crime against humanity in the ICC Statute.[297] The offence is characterised as a crime against humanity under Article 2(g) of the Statute and the Indictments before the Special Court were the first to specifically indict persons with the crime of sexual slavery.

155. By this assertion, the Chamber does not suggest that the offence is entirely new. It is the Chamber's view that sexual slavery is a particularised form of slavery or enslavement and acts which could be classified as sexual slavery have been prosecuted as enslavement in the past. In the *Kunarac* case, for instance, the Accused were convicted of the offences of enslavement, rape and outrages on personal dignity for having detained women for months and subjected them to rape and other sexual acts.[298] In that case, the ICTY Appeals Chamber emphasised that "it finds that enslavement, even if based on sexual exploitation, is a distinct offence from that of rape."[299]

156. The Chamber opines that the prohibition of the more particular offences such as sexual slavery and sexual violence criminalises actions that were already criminal. The Chamber considers that the specific offences are designed to draw attention to serious crimes that have been historically overlooked and to recognise the particular nature of sexual violence that has been used, often with impunity, as a tactic of war to humiliate, dominate and instil fear in victims, their families and communities during armed conflict.[300]

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[296] *Infra* paras 457-458.

[297] Article 7(1)(g) identifies sexual slavery as a crime against humanity and Article 8(2)(b)(xxii) identifies sexual slavery as a grave breach of the Geneva Conventions.

[298] *Kunarac et al.* Trial Judgement, paras 746-782.

[299] *Kunarac et al.* Appeal Judgement, para. 186.

[300] UN SC Res. 1820 (2008), 19 June 2008; Final report submitted by Ms. Gay J. McDougall, Special Rapporteur, *Contemporary Forms of Slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict*, Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Minorities, E/CN.4/Sub.2/1998/13, 22 June 1998, paras 7-19; Update to Final report submitted by Ms. Gay J. McDougall, Special Rapporteur, *Contemporary Forms of Slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict*, Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2000/21, 6 June 2000, para. 20 [Update to Final

157. As discussed in more detail below, this Chamber takes the view that the offence of enslavement is prohibited at customary international law and entails individual criminal responsibility.[301] The Chamber is satisfied that this would equally apply to the offence of sexual slavery which is "an international crime and a violation of *jus cogens* norms in the exact same manner as slavery."[302]

158. Consistent with the Rule 98 Decision, the Chamber has held that the relevant constitutive elements of sexual slavery are:

(i) The Accused exercised any or all 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;

(ii) The Accused caused such person or persons to engage in one or more acts of a sexual nature; and

(iii) The Accused intended to exercise the act of sexual slavery or acted in the reasonable knowledge that this was likely to occur.[303]

159. This Chamber considers that the *actus reus* of the offence of sexual slavery is made up of two elements: first, that the Accused exercised any or all of the powers attaching to the right of ownership over a person or persons[304] (the slavery element) and second, that the enslavement involved sexual acts (the sexual element).

160. In determining whether or not the enslavement element of the *actus reus* has been established, the Chamber notes that the list of actions that reflect the exercise of a power of ownership that is included in the element is not exhaustive. The Chamber adopts the following indicia of enslavement identified by the ICTY in *Kunarac et al.*: "control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection

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Report of Special Rapporteur]; Report of the United Nations High Commissioner for Human Rights, *Systematic rape, sexual slavery and slavery-like practices during armed conflicts*, General Assembly, Human Rights Council, Sub-Commission on the Promotion and Protection of Human Rights, A/HRC/Sub.1/58/23, 11 July 2006, paras 5-11.

[301] *Kunarac et al.* Trial Judgement, paras 519-537 and 539; *Krnojelac* Trial Judgement, para. 355. *See* also *Kunarac et al.* Appeal Judgement, para. 124.

[302] Update to Final Report of Special Rapporteur, para. 51.

[303] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 22.

[304] *Kunarac et al.* Trial Judgement, para. 540. *See also AFRC* Appeal Judgement, para. 102.

to cruel treatment and abuse, control of sexuality and forced labour."[305]

161. The Chamber also notes that the expression "similar deprivation of liberty" may cover situations in which the victims may not have been physically confined, but were otherwise unable to leave as they would have nowhere else to go and feared for their lives.[306]

162. To convict an Accused for this offence, the Prosecution must also prove that the Accused caused the enslaved person to engage in acts of a sexual nature. The acts of sexual violence are the additional element that, when combined with evidence of slavery, constitutes sexual slavery.[307]

163. The Chamber emphasises that the lack of consent of the victim to the enslavement or to the sexual acts is not an element to be proved by the Prosecution, although whether or not there was consent may be relevant from an evidentiary perspective in establishing whether or not the Accused exercised any of the powers attaching to the right of ownership.[308] The Chamber subscribes to the statement of the ICTY Appeals Chamber that "circumstances which render it impossible to express consent may be sufficient to presume the absence of consent."[309] The duration of the enslavement is not an element of the crime, although it may be relevant in determining the quality of the relationship.[310]

3.3.8. Other Inhumane Acts (Counts 8 and 11)

164. The Indictment in Count 8 charges the Accused with "other inhumane acts" as a crime against humanity under Article 2 of the Statute. This Count relates to the Accused's alleged

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[305] *Kunarac et al.* Trial Judgement, para. 543 [original footnotes omitted], cited with approval by the Appeals Chamber in *Kunarac et al.* Appeal Judgement, para. 119.

[306] *Kunarac et al.* Trial Judgement, para. 750. This expression was also insisted upon by some delegations to the Rome Statute Working Group on Elements of Crimes to ensure that the provision did not exclude from prohibition situations in which sexually abused women were not locked in a particular place but were nevertheless "deprived of their liberty" because they have no where else to go and fear for their lives, *see* Eve La Haye in Roy S. Lee, ed., *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Transnational Publishers, Ardsley, New York: 2001), pp. 191-192 [Lee, *International Criminal Court*].

[307] Update of Report by Special Rapporteur, paras 47 and 51.

[308] *Kunarac et al.* Appeals Judgement, para. 120. *See* also Update of Report by Special Rapporteur, para. 51: "Likewise, a person cannot, under any circumstances, consent to be enslaved or subjected to slavery. Thus, it follows that person accused of slavery cannot raise consent of the victim as a defence." [original footnotes omitted] Once the element of enslavement has been proven, then the enslaved person would not be capable of providing voluntary and genuine consent.

[309] *Kunarac et al.* Appeals Judgement, para. 120.

[310] *Kunarac et al.* Appeals Judgement, para. 121.

responsibility for the women and girls being forced into "marriages" and being forced to perform a number of conjugal duties under coercion by their "husbands" in Kono District, Koinadugu District, Bombali District, Kailahun District, Freetown and the Western Area and Port Loko District in different time periods relevant to the Indictment.[311] Count 11 charges the Accused with the same offence, but is related instead to the Accused's alleged responsibility for acts of violence including beatings and ill-treatment of civilians in Kenema District and the mutilation of civilians in Kono District, Koinadugu District, Bombali District, Freetown and the Western Area and Port Loko District between about May 1997 and April 1999.[312]

165. The Chamber recalls that the Appeals Chamber ruled that the offence of other inhumane acts forms part of customary international law.[313] The Chamber is of the opinion that the crime of other inhumane acts is a residual category for serious acts which are not otherwise enumerated in Article 2 but which nevertheless require proof of the same general requirements.[314]

166. The Appeals Chamber has emphasised that the crime of other inhumane acts is designed to be "inclusive in nature, intended to avoid unduly restricting the Statute's application to crimes against humanity.[315] The Chamber noted that a wide range of criminal or violent acts, including sexual crimes, have been recognised as other inhumane acts in the jurisprudence of international tribunals and concluded that the offence of other inhumane acts cannot be limited to exclude crimes with a sexual or gender component or nature.[316]

167. As a result, this Chamber will consider all acts or omissions alleged to constitute other inhumane acts in order to determine whether or not they are of such a character as to satisfy the elements of the crime.

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[311] Indictment, paras 54-60.
[312] Indictment, paras 61-67.
[313] *AFRC* Appeal Judgement, para. 198, citing *Stakic* Appeal Judgement, para. 315 and *Blagojevic and Jokic* Trial Judgement, para. 624.
[314] *Galic* Trial Judgement, para. 152; *Vasiljevic* Trial Judgement, para. 234; *Krnojelac* Trial Judgement, para. 130; *Prosecutor v. Kvocka, Kos, Radic, Zigic and Prcac*, IT-98-30/1-T, Judgement (TC), 2 November 2001, para. 206 [*Kvocka et al.* Trial Judgement].
[315] *AFRC* Appeal Judgement, para. 183, citing *Blagojevic and Jokic* Trial Judgement, para. 625 and *Akayesu* Trial Judgement, para. 585.
[316] *AFRC* Appeal Judgement, paras 184-186. *See also CDF* Appeals Judgement, para. 441: "The Appeals Chamber is of the opinion that acts of sexual violence may constitute 'other inhumane acts' [...]"

168. Consistent with the foregoing, the constitutive elements of the crime of other inhumane acts are:

(i) The occurrence of an act or omission that inflicts great suffering or serious injury to body, or to mental or physical health;

(ii) The act or omission is sufficiently similar in gravity to the acts referred to in Article 2(a) to Article 2(h) of the Statute;

(iii) The Accused was aware of the factual circumstances that established the character of the gravity of the act;[317] and

(iv) The Accused, at the time of the act or omission, had the intention to commit the inhumane act or acted in the knowledge that this would likely occur.[318]

169. The Chamber is satisfied that in order to assess the seriousness of an act or omission, consideration must be given to all the factual circumstances of the case which may include the nature of the act or omission, the context in which it occurred, the personal circumstances including the age, gender and health of the victim, and the physical, mental and moral effects of the act or omission on the victim.[319]

170. The Chamber takes the view that the *mens rea* for the offence of other inhumane acts is established where the Accused, at the time of the act or omission, intended to inflict great suffering or serious injury to body, or to mental or physical health of the victim, or where it is shown that he or she had reasonable knowledge that the act or omission would likely inflict great suffering or serious injury to body, or to mental or physical health.[320]

171. The Chamber recognises that a third party could suffer serious injury to mental health by witnessing acts committed against others, particularly against family or friends. The Chamber is also of the opinion that the Accused may be held liable for causing serious injury to mental health to a third party who witnesses acts committed against others only where, at the time of the act, the Accused had the intention to inflict serious injury to mental health on the third party, or where the Accused had reasonable knowledge that his act would likely cause

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[317] *AFRC* Appeal Judgement, para. 198.
[318] *CDF* Trial Judgement, para. 150; *Galic* Trial Judgement, para. 154; *Vasiljevic* Trial Judgement, para. 236.
[319] *AFRC* Appeal Judgement, para. 184; *Galic* Trial Judgement, para. 153; *Vasiljevic* Trial Judgement, para. 235.
[320] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98 (TC), 21 October 2005, para. 94 [*CDF* Rule 98 Decision]; *see also Krnojelac* Trial Judgement, para. 132; *Vasiljevic* Trial Judgement, para. 236; *Kayishema and Ruzindana* Trial Judgement, para. 153.

serious injury to mental health on the third party. To this effect, the Chamber endorses the view of the ICTR Trial Chamber in *Kayishema and Ruzindana* that "if at the time of the act, the Accused was unaware of the third party bearing witness to his act, then he cannot be held responsible for the mental suffering of the third party."[321]

172. In relation to Count 11, the Chamber notes that the Prosecution has pleaded beatings and ill-treatment in Kenema District, while in other Districts the conduct charged is mutilation. The Chamber considers that the crime of other inhumane acts may encompass both types of conduct.

3.3.9. Outrages Upon Personal Dignity (Count 9)

173. The Indictment charges the Accused in Count 9 with outrages upon personal dignity as a violation of Common Article 3 and of Additional Protocol II punishable under Article 3 of the Statute. The Count relates to the Accused's alleged responsibility for the acts outlined above in Counts 6 through 8 of the Indictment.

174. The Chamber notes that acts that constitute outrages upon personal dignity are prohibited under Common Article 3 of the Geneva Conventions and Article 4(2)(e) of Additional Protocol II. It is well established that the offence of outrages upon personal dignity exists under customary international law and entails individual criminal responsibility.[322] In this regard, the ICTY Trial Chamber in *Furundzija* observed:

> The general principle of respect for human dignity is the basic underpinning and indeed the very *raison d'être* of international humanitarian law and human rights law; indeed in modern times it has become of such paramount importance as to permeate the whole body of international law. This principle is intended to shield human beings from outrages upon their personal dignity, whether such outrages are carried out by unlawfully attacking the body or by humiliating and debasing the honour, the self-respect or the mental well being of a person.[323]

175. The Chamber considers that the constitutive elements of this offence are as follows:

(i) The Accused humiliated, degraded or otherwise violated the dignity of one or more persons;

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[321] *Kayishema and Ruzindana* Trial Judgement, para. 153.
[322] *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement (AC), 24 March 2000, paras 21-22 [*Aleksovski* Appeal Judgement]; *Kunarac et al.* Trial Judgement, para 498; *Furundzija* Trial Judgement, para. 168.
[323] *Furundzija* Trial Judgement, para. 183. See also *Aleksovski* Appeal Judgement, para. 25.

(ii) The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity;[324] and

(iii) The Accused intended the act or omission in the knowledge that the act could have the effect of humiliating, degrading or otherwise violating the dignity of the person.

176. The *actus reus* of the offence is that there was an act or omission that caused serious humiliation, degradation or otherwise violated the personal dignity of the victim. The second element reflects that the determination of whether or not the act is severe enough to constitute an outrage upon personal dignity must be based on an objective assessment.[325] It is not necessary that the act cause "lasting suffering" to the victim.[326]

177. The Chamber also recognises that the *mens rea* of the offence does not require that the Accused had a specific intent to humiliate or degrade the victims,[327] that is, that he perpetrated the act for that very reason.[328] The act or omission must, however, have been done intentionally and the Accused must have known "that his act or omission *could* cause serious humiliation, degradation or otherwise be a serious attack on human dignity."[329] The Chamber considers that there is no requirement to establish that the Accused knew of the "*actual* consequences of the act",[330] but only of its possible consequences.[331] There is no additional requirement to establish that the Accused had a discriminatory intent or motive.[332]

3.3.10. Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Mutilation (Count 10)

178. The Indictment charges the Accused under Count 10 with mutilation as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II

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[324] ICC Elements of Crimes, Article 8(2)(c)(ii).
[325] *Kunarac et al.* Appeal Judgement, paras 162-163.
[326] *Kunarac et al.* Trial Judgement, para. 501.
[327] *Kunarac et al.* Trial Judgement, paras 509-511 and 514.
[328] *Kunarac et al.* Trial Judgement, para. 774.
[329] *Kunarac et al.* Appeal Judgement, para. 164 [emphasis in original].
[330] *Kunarac* Trial Judgement, para. 512 [emphasis in original].
[331] *Kunarac et al.* Appeal Judgement, para. 165. *See also*: *Kunarac et al.* Trial Judgement, para. 513: "In practice, the question of knowledge of the *nature* of the act is unlikely to be of great significance. When the objective threshold of the offence is met – i.e. the acts or omissions would be generally considered to be seriously humiliating, degrading or otherwise a serious attack on human dignity – it would be rare that a perpetrator would not also know that the acts could have that effect."
[332] *Aleksovski* Appeal Judgement, para. 28.

pursuant to Article 3(a) of the Statute. This Count relates to the Accused's alleged responsibility for the mutilation of civilians in Kono District, Koinadugu District, Bombali District, Freetown and the Western Area and Port Loko District between about May 1997 and April 1999.[333] Under this Count, the Accused are charged with "violence to life, health and physical or mental well-being of persons, in particular mutilation." The Chamber has analysed this offence as mutilation, as the category of "violence to life and person" does not exist as an independent offence in customary international law.[334]

179. The Chamber observes that the *Ad Hoc* Tribunals have repeatedly held that acts of mutilation can be prosecuted as falling under the category of inhumane acts as they cause serious mental or physical suffering or injury and/or constitute a serious attack on human dignity.[335] Further, the ICTR has recognised that mutilation, which can be irreparable, is a particularly serious form of physical harm.[336] Given that mutilation is a particularly egregious form of prohibited violence, this Chamber is satisfied that the prohibition against mutilation exists at customary international law and entails individual criminal responsibility.

180. The Chamber considers that the offence contains the following elements:

(i) The Accused subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage;

(ii) The conduct was neither justified by the medical, dental or hospital treatment of the person(s) concerned nor carried out in their interests;[337] and

(iii) The Accused intended to subject the person or persons to mutilation or acted in the reasonable knowledge that this was likely to occur.

181. While Common Article 3 and Article 4(2) of Additional Protocol II do not specifically provide for an exception for medically justified procedures, the Chamber finds that this

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[333] Indictment, paras 61-67.

[334] *See Vasiljevic* Trial Judgement, paras 195 and 203, quoted above in the context of murder as a serious violation of Common Article 3 and Additional Protocol II under Count 2. This approach is consistent with the treatment of this provision, adopted as Article 8(2)(c)(i) of the ICC Statute, as four separate crimes under the ICC Elements of Crimes. (ICC Elements of Crimes, pp. 37-39).

[335] *Kvocka et al.* Appeal Judgement, para. 435; *Kvocka et al.* Trial Judgement, para. 208; *Kayishema and Ruzindana* Trial Judgement, para. 586. *See also Prosecutor v. Niyitegeka*, ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003, paras 465-467 [*Niyitegeka* Trial Judgement].

[336] *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Judgement (AC), 1 June 2001, para. 361 [*Kayishema and Ruzindana* Appeal Judgement].

exception should be logically inferred. As a result, this second element must be proven in order to establish that the offence of mutilation has occurred.[338]

182. Furthermore, the Prosecution is not required to establish that the mutilation seriously endangers the physical or mental health or integrity of the victim.[339]

3.3.11. Conscripting or Enlisting Children under the Age of 15 into Armed Forces or Groups or Using Them to Participate Actively in Hostilities (Count 12)

183. The Indictment under Count 12 charges the Accused with the offence of conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities as an "other serious violation of international humanitarian law" pursuant to Article 4(c) of the Statute.[340] This Count alleges that the Accused are responsible for the AFRC/RUF having routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities at all times relevant to the Indictment.[341]

184. The Appeals Chamber has held that the offence of recruitment of child soldiers by way of conscripting or enlisting children under the age of 15 years into an armed force or group and/or using them to participate actively in hostilities constitutes a crime under customary international law which entailed individual criminal responsibility prior to the time frame of the Indictment.[342]

185. The Chamber accepts that enlistment means "accepting and enrolling individuals when they volunteer to join an armed force or group."[343] Enlistment requires that the person voluntarily consented to be part of the armed force or group.[344] The Appeals Chamber has

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[337] *See* Elements of Crimes under Article 8(2)(c)(i) of the ICC Statute.
[338] *See also* Eve La Haye, "Violations of Common Article 3" in Lee, *International Criminal Court*, pp. 208-209.
[339] This requirement, contained in Article 11(4) of Additional Protocol I, does not form part of the violation under Common Article 3 and Article 4(2) of Additional Protocol II. *See also Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Judgement (TC), 20 June 2007, para. 725 [AFRC Trial Judgement].
[340] Indictment, para. 68.
[341] Indictment para. 68. The RUF Oral Rule 98 Decision found no evidence for the Districts of Bonthe, Moyamba, Pujehun, Bo and Tonkolili: RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 29-30.
[342] *CDF* Appeal Judgement, para. 139; *CDF* Appeal Decision on Child Recruitment, para. 53.
[343] *CDF* Appeal Judgement, para. 140, quoting *AFRC* Trial Judgement, para. 735. *See also Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007, para. 247 [*Lubanga* Confirmation of Charges].
[344] *CDF* Appeal Judgement, para. 140.

emphasised that enlistment cannot be narrowly defined as a formal process in those cases where the armed group is not a conventional military organisation and must instead be understood in the broad sense to include "any conduct accepting the child as a part of the militia. Such conduct would include making him participate in military operations."[345]

186. The Chamber recalls that conscription means the "compulsory enlistment of persons into military service."[346] In the context of lawful governments, conscription is generally legitimized through constitutional or legislative powers.[347] However, conscription also encompasses what is commonly known as "forced recruitment", wherein individuals are recruited through illegal means, for instance through the use of force or following abduction.[348]

187. The Chamber takes this opportunity to repeat, however, that "the distinction between voluntary enlistment and conscription is somewhat contrived. Attributing voluntary enlistment in armed forces or groups to a child under the age of 15 years, particularly in a conflict setting where human rights abuses are rife, is, in the Chamber's view, of questionable merit."[349]

188. In defining the phrase "using children to participate actively in hostilities", the Chamber has expressed its agreement with the following Commentary on the relevant statutory provision in the ICC Statute which states *inter alia*:

> The words "using" and "participate [actively]" have been adopted in order to cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and use of children

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[345] *CDF* Appeal Judgement, para. 144.

[346] Black's Law Dictionary, 8th Edition, (St. Paul, Minnesota: West, 2004), *s.v.* "conscription" and "draft", pp. 323 and 531. *See also* Concise Oxford English Dictionary, 10th Edition, (New York: Oxford University Press, 2002), *s.v.* "conscript", p. 303.

[347] *See*, for example, the following legislation: *Constitutional Law of the Republic of Angola*, s. 152(2) (adopted 25 August 1992); *National Constitution of the Argentine Republic (Constitución Nacional de la República Argentina)*, s. 21 (adopted 22 August 1994); *Defence Act 1903 (Act No. 20 of 1903)*, Art. 59, Australia (as amended by *Act No. 26 of 2005*); *Constitution of 1988 with Reforms through 2005 (Constituição de 1988 com reformas até 2005)*, s. 143, Brazil (adopted 5 October 1988); *Political Constitution of the Republic of Chile of 1980 (Constitución Política de la República de Chile de 1980)*, s. 22 (as amended by *Law 20.050 of 2005*); *The Constitution of the Republic of Hungary (Act XX of 1949), (A Magyar Köztársaság Alkotmánya)*, Art. 70/H, (as amended up to 2003); *Constitution of the Kingdom of the Netherlands 2002 (Grondwet voor het Koninkrijk der Nederlanden 2002)*, Art. 98, (adopted 2002); *Constitution of the Kingdom of Thailand*, s. 69 (adopted 11 October 1997); and *Constitution of the United States of America*, Art. 1, Section 8 (adopted 17 September 1787).

[348] The United States Supreme Court has used the terms "forced recruitment" and "conscription" interchangeably: *see Immigration and Naturalization Service v. Jairo Jonathan Elias-Zacarias*, (1992) 502 U.S. 478 (United States Supreme Court), p. 480.

[349] *CDF* Trial Judgement, para. 192. *See also*: *CDF* Appeal Judgement, para. 140: "where a child under the age of 15 years is allowed to voluntarily join an armed force or group, his or her consent is not a valid defence."

> as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology.[350]

189. The Chamber recognises that "armed forces or groups" may be either State or non-State controlled. The Chamber has already expressed its approval of the following definition of "armed groups" given in the *Tadic* Appeal Judgement:

> One should distinguish the situation of individuals acting on behalf of a State without specific instructions, from that of individuals making up *an organised and hierarchically structured group*, such as a military unit or, in case of war or civil strife, armed bands of irregulars or rebels. Plainly, an organised group differs from an individual in that the former normally has a structure, a chain of command and a set of rules as well as the outward symbols of authority. Normally a member of the group does not act on his own but conforms to the standards prevailing in the group and is subject to the authority of the head of the group.[351]

190. The Chamber considers that the specific elements of enlisting or conscripting children under the age of 15 years into armed forces or groups are:

(i) One or more persons were enlisted or conscripted by the Accused into an armed force or group;

(ii) Such person or persons were under the age of 15 years;

(iii) The Accused knew or had reason to know that such person or persons were under the age of 15 years and that they may be trained for or used in combat;[352] and

(iv) The Accused intended to conscript or enlist the said persons into the armed force or group.

191. The Appeals Chamber held that a nexus must be established between the act of the Accused and the child joining the armed force or group in order to constitute enlistment. "Whether such a nexus exists is a question of fact which must be determined on a case-by-case basis."[353]

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[350] Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF.183/2/Add.1, 14 April 1998, p. 21, fn 12, cited in *CDF* Trial Judgement, para. 193.
[351] *Tadic* Appeal Judgement, para. 120 [emphasis in original], cited in CDF Trial Judgement, para. 194.
[352] *CDF* Appeal Judgement, para. 141.
[353] *CDF* Appeal Judgement, para. 141.

192. The Appeals Chamber has stated that the *mens rea* requirement of the offence requires not only that the person be aware that the child is under the age of 15, but also that the child may be trained for or used in combat.[354]

193. This Chamber holds that the specific elements of using children under the age of 15 years to participate actively in hostilities are as follows:

(i) One or more persons were used by the Accused to actively participate in hostilities;

(ii) Such person or persons were under the age of 15 years;

(iii) The Accused knew or had reason to know that such person or persons were under the age of 15 years; and

(iv) The Accused intended to use the said persons to actively participate in hostilities.[355]

194. It is the Chamber's view that the rules of international humanitarian law apply equally to all parties in an armed conflict, regardless of the means by which they were recruited.[356] Furthermore, the Chamber is mindful that the special protection provided by Article 4(3)(d) of Additional Protocol II remains applicable in the event that children under the age of 15 are conscripted, enlisted, or used to participate actively in the hostilities.

3.3.12. Enslavement (Count 13)

195. The Indictment under Count 13 charges the Accused with enslavement as a crime against humanity pursuant to Article 2(c) of the Statute. The Count relates to the Accused's alleged responsibility for widespread abductions of civilians and use of civilians as forced labour in Kenema District, Kono District, Koinadugu District, Bombali District, Kailahun District, Freetown and the Western Area and Port Loko District in different time periods relevant to the Indictment.[357]

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[354] *CDF* Appeal Judgement, para. 141.
[355] *CDF* Trial Judgement, para. 196.
[356] *See* Peter Rowe, *The Impact of Human Rights Law on Armed Forces* (New York: Cambridge University Press, 2006), p. 21: "International humanitarian law draws no distinction between volunteer and conscript soldiers. This is not surprising since the Geneva Conventions of 1949 were drawn up at a time when most of the major military powers had in place some form of conscripted military service and the two World Wars had been fought by large numbers of conscript soldiers."
[357] Indictment, paras 69-76.

196. This Chamber agrees with the ICTY Trial Chamber in *Krnojelac* that the "prohibition against slavery in situations of armed conflict is an inalienable, non-derogable and fundamental right, one of the core rules of general customary and conventional international law."[358] The Chamber considers that the offence of enslavement exists at customary international law and entails individual criminal responsibility.[359]

197. In the Chamber's Rule 98 Decision in this case, the Chamber held that the elements of the crime of enslavement are as follows:

(i) The Accused exercised any or all of the powers attaching to the right of ownership over a person, such as by purchasing, selling, lending or bartering such person or persons, or by imposing on them a similar deprivation of liberty; and

(ii) The Accused intended to exercise the act of enslavement or acted in the reasonable knowledge that this was likely to occur.

198. The *actus reus* of the offence is that the Accused exercised any or all of the powers attaching to the right of ownership over a person or persons while the *mens rea* is the intention to exercise such powers.[360]

199. In determining whether or not enslavement has occurred, the Chamber is mindful of the following indicia of enslavement that have been identified by the ICTY in the *Kunarac et al.* case: "control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour."[361]

200. The Chamber observes that the lack of consent of the victim is not an element to be proved by the Prosecution; although whether or not there was consent may be relevant from an evidentiary perspective.[362] The Chamber considers that "circumstances which render it

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[358] *Krnojelac* Trial Judgement, para. 353.
[359] *Kunarac et al.* Trial Judgement, paras 519-537, 539; *Krnojelac* Trial Judgement, paras 353, 355. *See also Kunarac et al.* Appeal Judgement, para. 124.
[360] *Kunarac et al.* Trial Judgement, para. 540.
[361] *Kunarac et al.* Trial Judgement, para. 543, cited with approval by the Appeals Chamber in *Kunarac et al.* Appeal Judgement, para. 119 [original footnotes omitted].
[362] *Kunarac et al.* Appeals Judgement, para. 120.

impossible to express consent may be sufficient to presume the absence of consent."[363] Similarly, there is no requisite duration of the relationship between the Accused and the victim that must exist in order to establish enslavement. The duration may, however, be relevant in determining the quality of the relationship.[364]

201. We hold that the *mens rea* of the crime of enslavement consists of the intention to exercise the act of enslavement or to act in the reasonable knowledge that this was likely to occur. As the absence of consent is not an element of the offence, the knowledge on the part of the Accused of this absence of consent is not an element of the offence either.

202. Given the references to forced labour in the Indictment, the Chamber notes that not all labour by civilians during an armed conflict is prohibited – the prohibition is only against forced or involuntary labour. "What must be established is that the relevant persons had no real choice as to whether they would work."[365] Whether the labour was forced and constituted enslavement is a factual determination that must be made in light of the indicia of enslavement outlined above. However, the subjective belief of labourers that they were forced to work is not sufficient to establish lack of consent, but must be supported by objective evidence.[366]

203. The Chamber, like the ICTY Appeals Chamber before it, considers it relevant to quote from the *Pohl* case on the nature of enslavement:

> Slavery may exist even without torture. Slaves may be well fed, well clothed, and comfortably housed, but they are still slaves if without lawful process they are deprived of their freedom by forceful restraint. We might eliminate all proof of ill-treatment, overlook the starvation, beatings, and other barbarous acts, but the admitted fact of slavery - compulsory uncompensated labour - would still remain. There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, is still slavery.[367]

3.3.13. Pillage (Count 14)

204. The Indictment under Count 14 charges the Accused with pillage as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(f) of the Statute. This

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[363] *Kunarac et al.* Appeals Judgement, para. 120.
[364] *Kunarac et al.* Appeals Judgement, para. 121.
[365] *Krnojelac* Trial Judgement, para. 359. *See also Krnojelac* Appeal Judgement, paras 194-195.
[366] *Krnojelac* Appeal Judgement, para. 195.
[367] *US v. Oswald Pohl and Others*, Judgement of 3 November 1947, reprinted in *Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council No. 10*, Vol 5, (1997), p. 958 at p. 970.

Count relates to the Accused's alleged responsibility for the widespread unlawful taking and destruction by burning of civilian property in Bo District, Koinadugu District, Kono District, Bombali District and Freetown and the Western Area between about June 1997 and February 1999.[368]

205. As previously observed by the Chamber, the terms "pillage", "plunder" and "spoliation" have been varyingly used to describe the unlawful appropriation of private or public property during armed conflict.[369] The Chamber notes that the ICTR and SCSL Statutes include the crime of pillage, which is prohibited under Article 4(2) of Additional Protocol II, while the ICTY Statute lists the crime of plunder.[370]

206. The Chamber is satisfied that Article 3(f) of the Statute contains a general prohibition against pillage which covers both organised pillage and isolated acts of individuals. Further, the prohibition extends to all types of property, including State-owned and private property.[371]

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[368] Indictment, paras 77-82.

[369] *CDF* Trial Judgement, para. 158; *Celebici* Trial Judgement, para. 591. *See also Naletilic and Martinovic* Trial Judgement, para. 612, fn 1499; *Blaskic* Appeal Judgement, paras 147-148. *See also Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-T, Decision on Motion for Acquittal (TC), 3 July 2000, fn 34 [*Kunarac et al.* Rule 98*bis* Decision] which stated that the ICRC Dictionary defines the two terms (plunder and pillage) together. These decisions relied on, *inter alia*: Article 6(b) of the Nürnberg Charter ("Plunder of public or private property" was one of the war crimes coming within the jurisdiction of the Tribunal) (Annex to the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis (London Agreement), London, 8 Aug. 1945, 85 U.N.T.S. 251); Article 2(1)(b) of Control Council Law No. 10 ("Plunder of public or private property" was listed as one of the war crimes) (Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, Allied Control Council Law no. 10, 20 December 1945, Official Gazette of the Control Council for Germany, No. 3, 31 January 1946); Article 47 of The Hague Regulations, 1899 ("Pillage is formally prohibited"); Article 28 of The Hague Regulations, 1907 ("Pillage is formally forbidden"); Article 33(2) of Geneva Convention IV ("Pillage is prohibited"); Article 5(b) of the Tokyo Charter (which merely referred to "violations of the laws or customs of war") (Charter for the International Military Tribunal for the Far East (1946), Special Proclamation by the Supreme Commander for the Allied Powers, as amended 26 April 1946, T.IA.S. No. 1589) ; and, Article 8(2)(a)(iv) and Article 8(2)(b)(xvi) of the ICC Statute (Article 8(2)(a)(iv) lists "Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" under the grave breaches of the Geneva Conventions and Article 8(2)(b)(xvi) lists "Pillaging a town or place, even when taken by assault" under "Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law").

[370] Article 4(f) of the ICTR Statute lists pillage among the serious violations of Article 3 common to the Geneva Conventions and to Additional Protocol II; Article 3(e) of the ICTY Statute lists plunder of public or private property among violations of the laws or customs of war. Although the official English versions of the ICTY and ICTR Statutes use the terms plunder and pillage, respectively, the official French versions of both the ICTY and ICTR Statutes use the term 'le pillage.'"

[371] *Celebici* Trial Judgement, para. 590; Oscar Uhler and Henri Coursier, eds., *Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949: commentary*, (Geneva: ICRC, 1958), Art. 33(2), pp. 226-227 [ICRC Commentary on Geneva Convention IV]; ICRC Commentary on Additional Protocols, Additional Protocol II, Art. 4(2)(g), para. 4542: "[t]he prohibition of pillage is based on Article 33, paragraph 2, of the Fourth Convention. It covers both organized pillage and pillage resulting from isolated acts of indiscipline. It

207. The Chamber considers that the elements of pillage are as follows:

(i) The Accused unlawfully appropriated the property;[372]

(ii) The appropriation was without the consent of the owner; and

(iii) The Accused intended to unlawfully appropriate the property.[373]

208. The Chamber notes that the ICTY Trial Chamber in the *Celebici* case found that this prohibition "extends both to acts of looting committed by individual soldiers for their private gain, and to the organised seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory."[374] In light of the foregoing, the Chamber confirms that "the inclusion of the requirement that the appropriation be for private or personal use is an unwarranted restriction on the application of the offence of pillage."[375]

209. Furthermore, under international law, pillage "does not require the appropriation to be extensive or to involve a large economic value."[376] Whether pillage committed on a small scale fulfils the jurisdictional requirement of the Special Court that the violation be *serious*, is, however, a different question.[377]

210. This Chamber has emphasised that the seriousness of the violation must be ascertained on a case-by-case basis, taking into consideration the specific circumstances in each instance.[378] Pillage "may be a serious violation not only when one victim suffers severe economic consequences because of the appropriation, but also, for example, when property is appropriated from a large number of people."[379] The Chamber concurs with the ICTY Appeals Chamber in *Kordic* and *Cerkez* that:

> [A] serious violation could be assumed in circumstances where appropriations take

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is prohibited to issue order whereby pillage is authorized. The prohibition has a general tenor and applies to all categories of property, both State-owned and private."

[372] *Kordic and Cerkez* Appeal Judgement, paras 79 and 84.

[373] *CDF* Trial Judgement, para. 165.

[374] *Celebici* Trial Judgement, para. 590.

[375] *CDF* Trial Judgement, para. 160.

[376] *Naletilic and Martinovic* Trial Judgement, para. 612.

[377] *Tadic* Appeal Decision on Jurisdiction, para. 94: In order for a violation to be serious, it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim.

[378] *Naletilic and Martinovic* Trial Judgement, para. 614 (in the context of 'plunder of public or private property' as a violation of the laws or customs of war pursuant to Article 3(e) of the ICTY Statute).

[379] *Naletilic and Martinovic* Trial Judgement, para. 614 (in the context of determining whether the violation – plunder in this case – is a serious violation pursuant to Article 1 of the ICTY Statute).

> place *vis-à-vis* a large number of people, even though there are no grave consequences for each individual. In this case it would be the overall effect on the civilian population and the multitude of offences committed that would make the violation serious.[380]

211. The *mens rea* for pillage is satisfied where it is established that the Accused intended to appropriate the property by depriving the owner of it.[381]

212. The Appeals Chamber has ruled that a necessary element of the crime of pillage is the unlawful appropriation of property. As a result, acts of destruction such as burning cannot constitute pillage under international criminal law.[382] The Chamber will not, therefore, take into account acts of destruction by burning for the purposes of determining the individual criminal responsibility of the Accused under Count 14. For the reasons outlined in paragraph 115 and 128, however, such evidence may be considered under Counts 1 and 2 of the Indictment.

3.3.14. Intentionally Directing Attacks Against Personnel Involved in a Peacekeeping Mission (Count 15)

213. The Indictment charges the Accused under Count 15 with intentionally directing attacks against personnel involved in a humanitarian or a peacekeeping mission, another serious violation of international humanitarian law punishable under Article 4(b) of the Statute. This Count relates to the alleged responsibility for attacks against UNAMSIL peacekeepers[383] between about the 15th of April 2000 and the 15th of September 2000 in Bombali District, Port Loko District and Tonkolili District.[384] The Chamber notes that the Indictment does not allege that there were any attacks against installations, material, units or vehicles, which are also prohibited under this offence.[385]

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[380] *Kordic and Cerkez* Appeal Judgement, para. 83.

[381] *Kordic and Cerkez* Appeal Judgement, para. 84. *See also Naletilic and Martinovic* Trial Judgement, para. 612, fn. 1498; *Celebici* Trial Judgement, para. 590.

[382] *CDF* Appeal Judgement, para. 409. See also paras 389-408.

[383] The Indictment also alleged that there had been attacks against humanitarian assistance workers, but the Chamber found in the RUF Oral Rule 98 Decision that no evidence had been adduced regarding humanitarian assistance workers: RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 39, 44.

[384] The Indictment alleged that the attacks happened "within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts." The Chamber found in the RUF Oral Rule 98 Decision that no evidence had been adduced for locations other than those listed above: RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 45.

[385] Indictment, para. 83.

214. The offence of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission was first explicitly identified as a war crime in the ICC Statute.[386] This Judgement is the first to specifically address the nature and scope of this offence.

215. The prohibition against attacks on peacekeeping personnel does not represent a new crime. Instead, as personnel and objects involved in a peacekeeping mission are only protected to the extent that "they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict", this offence can be seen as a particularisation of the general and fundamental prohibition in international humanitarian law against attacks on civilians and civilian objects.[387]

216. It is common knowledge that United Nations observer and peacekeeping missions have traditionally relied on their identification as United Nations representatives to ensure that their personnel and equipment are not targeted.[388] As attacks on United Nations personnel have increased, in particular since the 1990s, these attacks have been condemned and criminalised. The Chamber takes cognisance of the observation of the International Committee of the Red Cross ("ICRC") that "no official contrary practice was found. Attacks against peacekeeping personnel and objects have generally been condemned by States."[389] This

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[386] Article 8(2)(b)(iii) of the ICC Statute identifies the offence as a war crime in international conflicts.

[387] Report of the Secretary-General on the Establishment of the Special Court, para. 16: "Attacks against peacekeeping personnel, to the extent that they are entitled to protection recognized under international law to civilians in armed conflict, do not represent a new crime. Although established for the first time as an international crime in the Statute of the International Court, it was not viewed at the time of the adoption of the Rome Statute as adding to the already existing customary international law crime of attacks against civilians and persons hors de combat. Based on the distinction between peacekeepers as civilians and peacekeepers turned combatants, the crime defined in article 4 of the Statute of the Special Court is a specification of a targeted group within the generally protected group of civilians which because of its humanitarian or peacekeeping mission deserves special protection."

[388] *Note by the Secretary-General, Ad hoc* Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel, UN Doc. A/AC.242/1, 25 March 1994, para. 4: In general, "working under the banner of the United Nations... provided its personnel with safe passage and an unwritten guarantee of protection [...]"

[389] Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Volume I, p. 113, citing the practice of Australia (Statement before the UN General Assembly, UN Doc. A/50/PV.116, 25 April 1996, p. 6); Finland (Statement before the UN Security Council, UN Doc. S/PV.3367, 21 April 1994, p. 34); Germany (Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 11); Liberia (UN Secretary-General, Sixteenth Progress Report on UNOMIL, UN Doc. S/1996/232, 1 April 1996, s. 6); Russia (Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 9); Ukraine (Appeal of the Ministry of Foreign Affairs to the President of the UN Security Council, annexed to Letter dated 10 August 1992 to the President of the UN Security Council, UN Doc. S/24403, 10 August 1992, p. 2); United Kingdom (Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 11, and Statement before the UN Security Council, UN Doc. S/PV.3621, 25 January 1996, p. 19) and the United States (Former Yugoslavia: Grave Breaches of the

Chamber notes further that they have also been condemned by the United Nations and other international organisations,[390] which have in some cases specifically condemned attacks on United Nations personnel in internal conflicts.[391] We further note that some of these condemnations have explicitly characterised these acts as criminal.[392]

217. In addition, the Chamber observes that the *Convention on the Safety of United Nations and Associated Personnel* specifically criminalised attacks against United Nations and associated personnel as an offence subject to universal jurisdiction.[393] Moreover, a rule similar to that set

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Fourth Geneva Convention (Third Submission), annexed to Letter dated 5 November 1992 to the UN Secretary-General, UN Doc. S/24791, 10 November 1992, p. 19, and Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 11).

[390] *See*, for example, UN SC Res. 1828, 31 July 2008, preamble and para. 11; UN SC Res. 1782, 29 October 2007, para. 5; UN SC Res. 1721, 1 November 2006, para. 28; UN SC Res. 1574, 19 November 2004, para. 11; UN SC Res. 1187, 30 July 1998, s. 11; UN SC Res. 1180, 29 June 1998, s. 5; UN SC Res. 1173, 30 July 1998, s. 11; UN SC Res. 1164, 29 April 1998, s. 4; UN SC Res. 1157, 20 March 1998, s. 9; UN SC Res. 1118, 30 June 1997, preamble; UN SC Res. 1099, 14 March 1997, preamble and s. 4; UN SC Res. 1083, 27 November 1996, s. 7; UN SC Res. 1059, 31 May 1996, s. 6; UN SC Res. 1041, 29 January 1996, preamble and s. 4; UN SC Res. 1009, 10 August 1995, preamble and s. 6; UN SC Res. 1004, 12 July 1995, preamble; UN SC Res. 994, 17 May 1995, preamble; UN SC Res. 987, 19 April 1995, preamble and s. 1; UN SC Res. 954, 4 November 1994, preamble and s. 7; UN SC Res. 946, 30 September 1994, preamble and s. 4; UN SC Res. 923, 31 May 1994, preamble and s. 5; UN SC Res. 897, 4 February 1994, preamble and s. 8; UN SC Res. 794, 3 December 1992, preamble; UN SC Res. 788, 19 November 1992, s. 4; UN SC Res. 757, 30 May 1992, preamble; UN GA Res. 50/193, 22 December 1995, s. 14; UN GA Res. 49/196, 23 December 1994, s. 15; UN GA Res. 47/121, 18 December 1992, preamble; UN CHR Res. 1995/89, 8 March 1995, s. 17; UN Res. 1994/72, 9 March 1994, s. 12; UN CHR Res. 1994/60, 4 March 1994, s. 3; UN CHR Res. 1993/7, 23 February 1993, s. 15; UN Secretary-General's Bulletin, ST/SGB/1999/13, 6 August 1999, para. 1.2 [Secretary-General's Bulletin]; ECOWAS, Final communiqué of the first Summit Meeting of the Committee of Nine of ECOWAS on the Liberian Crisis, Abuja, 7 November 1992, annexed to Letter dated 13 November 1992 from Benin to President of the UN Security Council, UN Doc. S/24812, 16 November 1992, s. 9; European Union, Statement before the UN Security Council, UN Doc S/PV.3367, 21 April 1994, p. 13; Organisation of the Islamic Conference (OIC), Conference of Ministers of Foreign Affairs, Res. 1/6-EX, 1-2 December 1992; OIC, Statement before the UN Security Council, UN Doc. S/PV.3367, 21 April 1994, p 25; Resolution on support to the recent international initiatives to halt the violence and put an end to the violations of human rights in Bosnia and Herzegovina, 88th Inter-Parliamentary Conference, Stockholm, 7-12 September, s. 5.

[391] UN SC Res. 1633, 21 October 2005, para. 21; UN SC Res. 1615, 29 July 2005, paras 29-30; UN SC Res. 1592, 30 March 2005, preamble; UN SC Res. 1582, 28 January 2005, para. 29; UN SC Res. 1565 (2004), 1 October 2004, para. 20; UN SC Res. 1071, 30 August 1996, para. 8; UN SC Res. 912, 21 April 1994, para. 5; UN SC Res. 802, 25 January 1993, para. 2.

[392] UN SC Res. 1099, 14 March 1997, preamble and s. 4; UN SC Res. 865, 22 September 1993, s. 3; UN SC Res. 837, 6 June 1993, preamble; UN SC Res. 587, 23 September 1986, ss. 1 and 2. *See also* the following, which do not explicitly state that the attacks are criminal, but certainly imply that attacks on peacekeepers are criminal: UN SC Res. 1592, 30 March 2005, preamble; UN SC Res. 1582, 28 January 2005, para. 29; UN SC Res. 1565, 1 October 2004, para. 21; UN SC Res. 912, 21 April 1994, para. 5.

[393] Convention on the Safety of United Nations and Associated Personnel, UN GA Res. 49/59, 9 December 1994, Articles 9-16 [Convention on the Safety of United Nations and Associated Personnel]. Sierra Leone signed on to this Convention on 13 February 1995.

out in the Statute is contained in some military manuals.[394] This Chamber notes further that it is an offence to attack personnel and other objects involved in a peacekeeping mission under the legislation of many States.[395]

218. The Chamber considers the condemnation and criminalisation of intentional attacks against personnel and objects involved in a humanitarian or a peacekeeping mission by States and international organisations, the finding of the ICRC and the inclusion of the offence in the ICC Statute in 1998 demonstrate State practice and *opinio juris*. The Chamber is also of the view that this offence is a particularisation of the general and fundamental prohibition in international humanitarian law, in both international and internal conflicts, against attacking civilians and civilian property. This Chamber is, therefore, satisfied that this offence existed in customary international law in both international and non-international conflicts and entailed individual criminal responsibility at the time of the acts alleged in the Indictment.

219. The Chamber holds that the elements of the offence of 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 are as follows:

(i) The Accused directed an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations;

(ii) The Accused intended such personnel, installations, material, units or vehicles to be the object of the attack;

(iii) Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict; and

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[394] *See*, for example, the military manuals of Cameroon (*Instructors' Manual* (1992), p. 110), Germany (*Military Manual* (1992), s. 418), New Zealand (*Military Manual* (1992), s. 1904), Nigeria (*Military Manual* (1994), p. 23, s. 6) and Spain (*LOAC Manual* (1996), Vol. I, s. 7.3.a.(9)).

[395] *See*, for example, the legislation of Australia (*ICC (Consequential Amendments Act* (2007), Schedule I, ss. 268.37 and 268.79); Azerbaijan (*Criminal Code* (1999), Art. 116(3)); Canada (*Crimes against Humanity and War Crimes Act* (2001), ss. 4(B)(c) and (D)(c); Congo (*Genocide, War Crimes and Crimes against Humanity Act* (1998), Art. 4); Georgia (*Criminal Code* (1999), Art. 413(d)); Germany (*Law Introducing the International Crimes Code* (2002), Art. 1, s. 10(1)(1); Mali (*Penal Code* (2001), Art. 31(i)(3)); Netherlands (*International Crimes Act* (2002), Arts. 5(5)(o) and 6(3)(c); New Zealand (*International Crimes and ICC Act* (2000), s. 11(2) and the United Kingdom (*UN Personnel Act* (1997), Article 1).

(iv) The Accused knew or had reason to know that the personnel, installations, material, units or vehicles were protected.[396]

220. In the view of the Chamber, the primary object of the attack must be the personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission. There exists no requirement that there be actual damage to the personnel or objects as a result of the attack[397] and this Chamber opines that the mere attack is the gravamen of the crime. The Chamber adopts the definition of attack in Article 49(1) of Additional Protocol I as an "act of violence". Insofar as non-international armed conflict is concerned, the Chamber holds that the same meaning applies to the term "attack" in Additional Protocol II.[398] Furthermore, the Chamber notes that attacks are narrower in scope than "military operations."

221. The Chamber observes that there is no jurisprudence defining a "peacekeeping mission in accordance with the Charter of the United Nations." The Charter of the United Nations does not make reference to peacekeeping missions. The concept of peacekeeping was developed through the practice of the United Nations as a means of achieving the goals of its Charter regarding the maintenance of international peace and security.[399] In the pursuance of these goals, peacekeeping missions have been used by the United Nations for 60 years.

222. Peacekeeping missions are generally formally created by a resolution of the Security Council of the United Nations.[400] This Chamber is of the view that the legal basis for the

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[396] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 37-38.

[397] *See* Daniel Frank, "Article 8(2)(b)(iii)-Attacking Personnel or Objects Involved in a Humanitarian Assistance or Peacekeeping Mission" in Lee, *International Criminal Court*, pp. 145-147; Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court – Sources and Commentary* (Cambridge, UK: ICRC and Cambridge University Press, 2003), Article 8(2)(b)(iii), p. 159 [Dörmann, *ICC Elements of War Crimes*].

[398] *See* ICRC Commentary on Article 13 of Additional Protocol II, where the ICRC notes that at the Diplomatic Conference to the Protocols it was agreed that the same meaning should be given to the term "attack" in both Protocols: ICRC Commentary on Additional Protocols, para. 4783 and fn 19. *See also* Dörmann, *ICC Elements of War Crimes*, Article 8(2)(e)(ii), p. 448.

[399] The UN states that the first peacekeeping mission was the United Nations True Supervision Organization (UNTSO) in 1948. The United Nations Emergency Force (UNEF) deployed in Egypt in 1956 was instrumental in the development of the current doctrine of peacekeeping. *See*: Department of Peacekeeping Operation, *An Introduction to United Nations Peacekeeping*, Chapter 1: An Evolving Technique, available at http://www.un.org/Depts/dpko/dpko/intro/1.htm; Marten Zwanenburg, *Accountability of Peace Support Operations* (Geneva: Martinus Nijhoff Publishers, 2005), pp. 12-13 [Zwanenburg, *Accountability of Peace Support Operations*]; Bruno Simma et al., *The Charter of the United Nations: a Commentary*, 2nd ed., vol. I (Oxford: Oxford University Press, 2002), paras 14-71 [Simma, *Charter Commentary*]; Christine Gray, *International Law and the Use of Force*, 3rd ed., (Oxford: Oxford University Press, 2008), pp. 261-263 [Gray, *International Law and the Use of Force*].

[400] Peacekeeping missions have also been authorised by the General Assembly of the United Nations on several occasions. *See*: Simma, *Charter Commentary*, paras 15-71, 88-91. *See also Uniting for Peace*, UN GA Res. 377(V), 3

creation of peacekeeping missions falls either within Chapter VI, which allows the Security Council to take non-binding measures to settle disputes between State parties,[401] or within Chapter VI in conjunction with Chapter VII, which allows the Security Council to adopt binding enforcement measures that are necessary to maintain or restore international peace and security.[402] It is noteworthy that in practice, the Security Council has never referred to Chapter VI in its resolutions establishing peacekeeping forces.[403] Commentators have noted that the legal basis for peacekeeping missions is of no practical significance as peacekeeping missions are deployed with the consent of the parties and their legitimacy is no longer questioned.[404]

223. It is likewise important to mention that in more recent times, the Security Council has referred to Chapter VII in resolutions that establish peacekeeping missions in difficult or unstable situations, typically in relation to internal conflicts, in order to provide more robust mandates to the peacekeepers and to demonstrate the Security Council's resolve.[405] Further, this Chamber observes that the Security Council has, on occasion, established multidimensional peacekeeping missions under Chapter VII with extremely broad mandates that included civilian administration.[406]

224. Significantly, the Chamber recognises that the United Nations has traditionally defined a peacekeeping mission as "involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security

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November 1950. The legitimacy of this practice was upheld by the International Court of Justice: *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, Advisory Opinion, ICJ Reports (1962) 151, 20 July 1962 [*Certain Expenses* ICJ Advisory Opinion].

[401] Chapter VI of the UN Charter is entitled "Pacific Settlement of Disputes" and contains Articles 33 to 38 (Charter of the United Nations, June 26, 1945, UNTS 993, entered into force Oct. 24, 1945 [UN Charter]).

[402] Chapter VII of the UN Charter is entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression" and contains Articles 39-51. This Chapter allows the Security Council to adopt binding enforcement measures that may include economic sanctions, embargoes or armed force.

[403] United Nations, *United Nations Peacekeeping: Meeting New Challenges, Frequently Asked Questions* (United Nations, 2006), p. 14 [*Peacekeeping: Frequently Asked Questions*].

[404] Zwanenburg, *Accountability of Peace Support Operations*, pp. 11-12; Simma, *Charter Commentary*, paras 84, 86; Gray, *International Law and the Use of Force*, p. 261.

[405] *Peacekeeping: Frequently Asked Questions*, p. 14; United Nations, Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (United Nations, 2008), p. 14 [*Peacekeeping Principles and Guidelines*]; Trevor Findlay, *The Use of Force in UN Peace Operations* (Oxford: Oxford University Press, 2002), pp. 7-8 [Findlay, *Use of Force in UN Operations*].

[406] This was done with regard to UNMIK in Kosovo, UNTAET in East Timor and with UNMIL in Liberia. *See* Gray, *International Law and the Use of Force*, pp. 294-298.

in areas of conflict".[407] Peacekeeping missions have, however, evolved to be more complex and multifunctional, and the United Nations currently defines peacekeeping as follows:

> Peacekeeping is a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers. Over the years, peacekeeping has evolved from a primarily military model of observing cease-fires and the separation of forces after inter-state wars, to incorporate a complex mode of many elements – military, police and civilian – working together to help lay the foundations for sustainable peace.[408]

225. In the Chamber's considered view, three basic principles are widely understood as the necessary foundation for a peacekeeping operation: consent of the parties, impartiality, and non-use of force except in self-defence and defence of the mandate.[409]

226. In practice, the peacekeeping force will be deployed with the consent of the main parties to a conflict.[410] In non-international conflicts, this consent is obtained from the warring parties, not out of legal obligation, but rather to ensure the effectiveness of the peacekeeping operation.[411]

227. The peacekeeping force is to remain impartial in their dealings with the parties, which should not be confused with absolute neutrality. This impartiality must involve the "adherence to the principles of the Charter and the objectives of a mandate"[412] and thus the peacekeeping operation "should not condone actions by the parties that violate the undertakings of the peace process or international norms and principles".[413]

228. The peacekeepers are only authorised to use force in self-defence.[414] It is now settled law that the concept of self-defence for these missions has evolved to include the "right to resist

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[407] United Nations, *The Blue Helmets: A Review of United Nations Peacekeeping*, 2nd ed. (New York: United Nations, 1990), p. 4.

[408] *Peacekeeping Principles and Guidelines*, p. 18.

[409] *Peacekeeping Principles and Guidelines*, p. 31; United Nations, Report of the Panel on United Nations Peace Operations, A/55/305-S/2000/809, 21 August 2000 [*Brahimi Report*], para. 48; Report of the Secretary-General, *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, 3 January 1995, A/50/60-S/1995/1, para. 33; Findlay, *Use of Force in UN Operations*, p. 4.

[410] *Certain Expenses* Advisory Opinion, p. 164; Gray, *International Law and the Use of Force*, p. 298; Simma, *Charter Commentary*, para. 84; N. D. White, *Keeping the Peace* (Manchester: Manchester University Press, 1997), pp. 232-233 [White, *Keeping the Peace*].

[411] Gray, *International Law and the Use of Force*, pp. 298-302.

[412] *Brahimi Report*, para. 50.

[413] *Peacekeeping Principles and Guidelines*, p. 33.

attempts by forceful means to prevent the peacekeeping operation from discharging its duties under the mandate of the Security Council."[415] The Chamber acknowledges that the operative United Nations doctrine on this issue is that peacekeeping operations should only use force as a measure of last resort, when other means have failed.[416]

229. The Chamber notes that the *Convention on the Safety of United Nations and Associated Personnel* does not refer to peacekeeping missions, but rather "United Nations operations":

> "United Nations operation" means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:
>
> (i) Where the operation is for the purpose of maintaining or restoring international peace and security; or
>
> (ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation. [...][417]

230. It is noteworthy that peacekeeping should be understood as distinct from enforcement actions authorised by the Security Council under Chapter VII. Article 42 of the United Nations Charter allows the Security Council to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security." In practice, the Security Council has authorised member States or coalitions of member States to conduct military enforcement action on a voluntary rather than mandatory basis.[418] By opposition to

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[414] White, *Keeping the Peace*, pp. 240-241; Yoram Dinstein, *War, Aggression and Self-Defence*, 3rd ed (Cambridge: Cambridge University Press, 2001), p. 267 [Dinstein, *War, Aggression and Self-Defence*].

[415] *Peacekeeping Principles and Guidelines*, pp. 34. Gray notes that these principles regarding self-defence are usually not expressly stated in the resolutions of the Security Council that establish the mandates of the force, but are affirmed in the reports of the Secretary-General (Gray, *International Law and the Use of Force*, p. 302). *See also*: Report of the Secretary-General on the Implementation of Security Council Resolution 340 (1973), 27 October 1973, S/11052/Rev.1, para. 5; The preamble to UN SC Res. 467, 24 April 1980, recalls the terms of reference in the report of the Secretary General that "self-defence would include resistance to attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council."

[416] *Peacekeeping Principles and Guidelines*, p. 35. It has been noted that peacekeepers have historically been very reticent to use any force, *see*: Findlay, *Use of Force in UN Operations*, p. 356: "Peacekeepers have continued to fail to use force in self-defence, even in life-and-death situations where it would be universally perceived as legitimate and warranted under the self-defence rule."

[417] Convention on the Safety of United Nations and Associated Personnel, Art. 1(c).

[418] Some examples of when the UN has authorised the use of force in this manner include: Korea (UN SC Res. 83, 27 June 1950; UN SC Res. 84, 7 July 1950); Iraq (UN SC Res. 678, 29 November 1990); the former Yugoslavia (UN SC Res. 770, 13 August 1992; UN SC Res. 771, 13 August 1992; UN SC Res. 816, 31 March 1993; UN SC Res. 836, 4 June 1993; UN SC Res. 1031, 15 December 1995); Somalia (UN SC Res. 794, 3 December 1992); and, Afghanistan (UN SC Res. 1510, 13 October 2003; UN SC Res. 1707, 12 September 2006;

peacekeeping operations, enforcement action does not rely on the consent of the States concerned, but on the binding authority of the Security Council under Chapter VII.

231. This Chamber further observes that the *Convention on the Safety of United Nations and Associated Personnel* expressly excludes from its application those United Nations operations "authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organised armed forces and to which the law of international armed conflict applies."

232. It is the Chamber's view that the second element reflects that this offence has a specific intent *mens rea*. The Accused must have therefore intended that the personnel, installations, material, units or vehicles of the peacekeeping mission be the primary object of the attack.

233. The Chamber holds that the third element requires that such personnel or objects be entitled to the protection given to civilians or civilian objects under the international law of armed conflict.[419] In the Chamber's view, common sense dictates that peacekeepers are considered to be civilians only insofar as they fall within the definition of civilians laid down for non-combatants in customary international law and under Additional Protocol II as discussed above – namely, that they do not take a direct part in hostilities. It is also the Chamber's view that by force of logic, personnel of peacekeeping missions are entitled to protection as long as they are not taking a direct part in the hostilities – and thus have become combatants - at the time of the alleged offence. Where peacekeepers become combatants, they can be legitimate targets for the extent of their participation in accordance with international humanitarian law. As with all civilians, their protection would not cease if the personnel use armed force only in exercising their right to individual self-defence.[420] Likewise, the Chambers opines that the use of force by peacekeepers in self-defence in the discharge of their mandate, provided that it is limited to such use, would not alter or diminish the protection afforded to peacekeepers.

234. In determining whether the peacekeeping personnel or objects of a peacekeeping

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UN SC Res. 1776, 19 September 2007; UN SC Res. 1833, 22 September 2008). *See also*: Dinstein, *War, Aggression and Self-Defence*, pp. 268-273; Gray, *International Law and the Use of Force*, pp. 258, 264-265, 286-292.

[419] *See also* Secretary-General's Bulletin, para. 1.

[420] Dörmann, *ICC Elements of War Crimes*, Art. 8(2)(b)(iii), p. 159.

mission are entitled to civilian protection, the Chamber must consider the totality of the circumstances existing at the time of the alleged offence,[421] including, *inter alia*, the relevant Security Council resolutions for the operation, the specific operational mandates, the role and practices actually adopted by the peacekeeping mission during the particular conflict, their rules of engagement and operational orders, the nature of the arms and equipment used by the peacekeeping force, the interaction between the peacekeeping force and the parties involved in the conflict, any use of force between the peacekeeping force and the parties in the conflict, the nature and frequency of such force and the conduct of the alleged victim(s) and their fellow personnel.

235. With regard to the *mens rea* of the offence, the Chamber opines that the Prosecution is obliged to prove that the Accused must have known or had reason to know that the personnel, installations, material, units or vehicles were protected. It is not necessary to establish that the Accused actually had legal knowledge of the protection to which the personnel and objects were entitled under international humanitarian law, but the Accused must have been aware of the factual basis for that protection.[422]

3.3.15. Taking of Hostages (Count 18)

236. The Indictment charges the Accused under Count 18 with the taking of hostages, a violation of Common Article 3 of the Geneva Conventions and of Additional Protocol II punishable under Article 3(c) of the Statute. This Count relates to the alleged responsibility for having abducted several hundred peacekeepers[423] who were then held hostage between about 15 April 2000 and 15 September 2000 in Bombali District, Tonkolili District, Port Loko District, Kono District and Kailahun Districts.[424]

237. The Chamber notes that the prohibition against the taking of hostages is found in

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[421] Daniel Frank, "Article 8(2)(b)(iii)-Attacking Personnel or Objects Involved in a Humanitarian Assistance or Peacekeeping Mission" in Lee, *International Criminal Court*, pp. 146-147.

[422] *See* ICC Elements of Crime, Article 8(2)(b)(iii), element 5, p. 24.

[423] The Indictment also alleged that humanitarian assistance workers had been abducted and held hostage, but the Chamber found in the RUF Oral Rule 98 Decision that no evidence had been adduced regarding humanitarian assistance workers: RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 39.

[424] The Indictment alleged that the attacks happened "within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts." The Chamber found in the RUF Oral Rule 98 Decision that no evidence had been adduced for locations other than those listed above: RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 45.

Common Article 3 of the Geneva Conventions, is identified as a grave breach under Articles 34 and 147 of Geneva Convention IV and is recognized as fundamental guarantee for civilians and persons *hors de combat* in Additional Protocols I and II.[425] It is also proscribed as an offence in the Statutes of the ICTY, the ICTR and the ICC[426] and has been recognised as an offence by the ICTY Appeals Chamber.[427]

238. Further, numerous military manuals and the legislation of many States also prohibit the taking of hostages.[428] This Chamber notes that hostage-taking in both international and national conflicts has been condemned by States and by international organisations.[429]

239. The Chamber is, therefore, satisfied that this prohibition against hostage-taking existed in customary international law and was deemed a war crime entailing individual criminal responsibility at the time of the commission of the offence as alleged in the Indictment.

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[425] Article 75(2)(c) of Additional Protocol I and Article 4(2)(c) of Additional Protocol II.

[426] ICTY Statute, Article 2(h), as a grave breach of the Geneva Conventions; ICTR Statute, Article 4(c), as a war crime; ICC Statute, Article 8(2)(a)(viii) as a grave breach of the 1949 Conventions and Article 8(2)(c)(iii) as a war crime.

[427] *Blaskic* Appeal Judgement, paras 638-639; *Kordic and Cerkez* Appeal Judgement, para. 932.

[428] *See*, for example and among many others, the military manuals of: Argentina (*Law of War Manual* (1969), ss. 4.012, and 8.001, *Law of War Manual* (1989), ss. 4.15, 4.29, 7.04 and 8.03); Australia (*Commanders' Guide* (1994), s. 1305(c)); Belgium (*Law of War Manual* (1983), pp. 50 and 55); Cameroon (*Disciplinary Regulations* (1975), Art. 32, *Instructor's Manual* (1992), p. 151, s. 421(1)); Canada (*LOAC Manual* (1999), p. 11-4, ss. 33(e) and 63(c), p. 16-3, s. 14(e) and p. 17-2, ss. 10 and 21); Colombia (*Basic Military Manual* (1995), p. 30); France (*Disciplinary Regulations as amended* (1975), Art. 9*bis* (2), *LOAC Manual* (2001), pp. 45, 51 and 101); Germany (*Military Manual* (1992), ss. 508, 537 and 1209); New Zealand (*Military Manual* (1992), ss. 1137.2, 1607, 1702.3(e), 1807.1 and 1812.1(c)); South Africa (*LOAC Manual* (1996), Vol. I, ss. 7.3.a.(1), 8.2.c., 10.6.b.(4) and 10.8.b.); United Kingdom (*Military Manual* (1958), s. 625(c), 626(q), *LOAC Manual* (1981), s. 9, p. 35, s. 9 and s. 12, p. 42 s. 2); and the United States (*Field Manual*, ss. 11 and 502(c)). *See also*, amongst many others, the legislation of Australia (*Geneva Conventions Act as amended* (1957), s. 7(1), *ICC (Consequential Amendments) Act* (2002), Schedule 1, ss. 268.34 and 268.75); Belgium (*Law concerning the Repression of Grave Breaches of the Geneva Conventions and their Additional Protocols as amended* (1993), Art. 1(3)(7)); Canada (*Geneva Conventions as amended* (1985), s. 3(1), *Crimes against Humanity and War Crimes Act* (2000), s. 4(1) and (4)); Colombia (*Penal Code* (2000), Art. 148); Germany (*Law Introducing the International Crimes Code*, (2002), Art. 1, s. 8(1)(2)); Lithuania (*Criminal Code as amended* (1961), Art. 336); New Zealand (*Geneva Conventions Act as amended* (1958) s. 3(1), *International Crimes and ICC Act* (2000), s. 11(2)); Spain (*Military Criminal Code* (1985), Art. 77(6) and *Penal Code* (1995), Art. 611(4)); United Kingdom (*Geneva Conventions Act as amended* (1957), s. 1(1), *ICC Act* (2001), ss. 50(1), 51(1) and 58(1)); and the United States (*War Crimes Act as amended* (1996), s. 2441(c)).

[429] *See generally*, UN SC Res. 638, 31 July 1989, preamble and ss. 1-2; UN Commission on Human Rights, Res. 1998/73. 22 April 1998, ss. 1-4 and UN Commission on Human Rights, Res. 2001/38, 23 April 2001, preamble and s. 1. *See*, for example, regarding Iraq: UN SC Res. 664, 18 August 1990, s. 1; UN SC Res. 674, 29 October 1990, s. 1; UN SC Res. 686, 2 March 1991, s. 2(c); UN SC Res. 706, 15 August 1991, s. 6; UN Commission on Human Rights, Res. 1992/71, 5 March 1992, s. 2(d). *See also*, regarding the conflict in Sierra Leone: UN Security Council, Statement by the President, UN Doc. S/PRST/1998/5, 26 February 1998 and Report of the Secretary-General on the Establishment of the Special Court, s. 14. *And see also*, regarding the conflict in the former Yugoslavia: UN GA Res. 53/164, 9 December 1998, s. 8; UN Commission on Human Rights, Res. 1992/S-1/1. 14 August 1992, s. 5.

240. In addition to the chapeau requirements for establishing a war crime, the Chamber holds that the specific elements for the offence of hostage-taking are as follows:

(i) The Accused seized, detained, or otherwise held hostage one or more persons;

(ii) The Accused threatened to kill, injure or continue to detain such person(s); and

(iii) The Accused intended to compel a State, an international organisation, 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(s).

241. Consistent with the general requirements for a war crime, this Chamber considers that it is the law that the person or persons held hostage must not be taking a direct part in the hostilities at the time of the alleged violation. The person(s) must be "seized, detained, or otherwise held hostage".[430] In the Chamber's opinion, the term "hostage" must be interpreted in its broadest sense.[431]

242. In addition to this element of confinement, the Chamber takes the view that the Prosecution must prove that there was a threat made against the hostage which would be realised if a particular condition is not fulfilled. The ICTY Appeals Chamber in *Blaskic* stated that "the essential element in the crime of hostage-taking is the use of a threat concerning detainees so as to obtain a concession or gain an advantage [...]."[432] The threat can be either explicit or implicit.[433]

243. The Chamber agrees that the taking of hostages is a crime with a specific intent *mens rea* and that "such a threat must be intended as a coercive measure to achieve the fulfilment of a condition."[434] The Prosecution must establish that in taking persons hostage and making a threat, the Accused intended to compel a party, broadly defined as either "a State, an international organisation, a natural or legal person or a group of persons", to do something or to refrain from doing something as an explicit or implicit condition for the safety or the release

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[430] ICC Elements of Crime for Article 8(2)(a)(viii).
[431] ICRC Commentary to Geneva Convention IV, Art. 34, p. 230; cited with approval in *Blaskic* Trial Judgement, para. 187.
[432] *Blaskic* Appeal Judgement, para. 639.
[433] William J. Fenrick in Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article* (Baden-Baden: Nomos Verl.-Ges, 1999), p. 185, margin 19, Art. 8(2)(a)(viii).
[434] *Kordic and Cerkez* Trial Judgement, para. 313.

of the hostages.

4. Law on the Modes of Liability Charged

244. In order to assess and determine the culpability of each Accused, it is necessary for the Chamber to examine the criminal responsibility of each Accused on all the modes of liability which have been alleged against them in the Indictment, either collectively or individually. In this regard, it is alleged that the Accused are responsible, pursuant to Article 6(1) of the Statute, for planning, instigating, ordering, committing or otherwise aiding and abetting the planning, preparation, or execution of the crimes charged in the Indictment.[435] "Committing" would include committing through participation in a joint criminal enterprise.[436] In addition or in the alternative, the Accused are also alleged to be criminally responsible pursuant to Article 6(3) of the Statute, as superiors of members of the RUF.[437]

245. The relevant paragraphs of Article 6 of the Statute provide as follows:

> 1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime. [...]
>
> 3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. [...]

246. The Chamber considers that the principle of legality demands that the Court shall apply the law which was binding upon individuals at the time of the acts charged.[438] The application of the law of Sierra Leone to the forms of liability within the jurisdiction of the Special Court is restricted to the crimes envisaged in Article 5 of the Statute and no Accused

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[435] Indictment, para. 38.
[436] Indictment, paras 35-38.
[437] Indictment, paras 20, 24, 29, 34 and 39.
[438] *See*, for example, *Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-99-37-AR72, Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction - Joint Criminal Enterprise (AC), 21 May 2003, para. 10 [*Ojdanic* Appeal Decision on Joint Criminal Enterprise].

has been charged with any crime under this Article.[439] The Chamber finds that for the purposes of the crimes envisaged in Articles 2 to 4 of its Statute, the Court has jurisdiction to consider only modes of liability which both (a) are contemplated by its Statute, and (b) existed in customary international law at the time of the alleged offences under consideration.[440] The Chamber further finds that all modes of liability listed in the Indictment are contemplated by the Statute of the Special Court and were recognized as such under customary international law at the time of the acts or omissions alleged in the Indictment.[441]

247. The Chamber is of the opinion that to establish individual criminal responsibility under Article 6(1) of the Statute for committing, planning, instigating, ordering or otherwise aiding and abetting in the planning, preparation or execution of a crime over which the Special Court has jurisdiction, or responsibility under Article 6(3) of the Statute, the Prosecution must prove that the crime in question has been perpetrated by the Accused.[442]

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[439] Article 6(5) of the Statute provides that: "[i]ndividual criminal responsibility for the crimes referred to in Article 5 shall be determined in accordance with the respective laws of Sierra Leone."

[440] *See Prosecutor v. Karemera, Ngirumpatse and Nzirorera*, ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise (AC), 12 April 2006, para. 15 [*Karemera* Appeal Decision on Joint Criminal Enterprise]; *Prosecutor v. Bagilishema*, ICTR-95-1A-A, Judgement (Reasons) (AC), 3 July 2002, para. 34 [*Bagilishema* Appeal Judgement]: "[t]he Stature does not provide for criminal liability other than for those forms of participation stated therein, expressly or implicitly. In particular, it would be both unnecessary and unfair to hold an accused responsible under a head of responsibility which has not clearly been defined in international criminal law." *See also Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-05-87-PT, Decision on Ojdanic's Motion Challenging Jurisdiction: Indirect Co-Perpetration (TC), 22 March 2006, para. 15.

[441] See *Prosecutor v. Hadzihasanovic, Alagic and Kubura*, IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility (AC), 16 July 2003, para. 44 [*Hadzihasanovic et al.* Appeal Decision on Command Responsibility]: "it has always been the approach of this Tribunal not to rely merely on a construction of the Statute to establish the applicable law on criminal responsibility, but to ascertain the state of customary law in force at the time the crimes were committed." *See also Tadic* Trial Judgement, paras 663-669. The *Tadic* Trial Chamber went through a number of sources and reached the following conclusion at para. 669: "the foregoing establishes the basis in customary international law for both individual responsibility and of participation in the various ways provided by Article 7 of the [ICTY] Statute. The International Tribunal accordingly has the competence to exercise the authority granted to it by the Security Council to make findings in this case regarding the guilt of the accused, whether as a principal or an accessory or otherwise as a participant." This finding has been followed in trial judgements of the ICTY and ICTR and has never been altered on appeal; *see Oric* Trial Judgement, para. 268; *Kordic and Cerkez* Trial Judgement, para. 373; *Prosecutor v. Aleksovski*, IT-95-14/1-T, Judgement (TC), 25 June 1999, paras 60-61 [*Aleksovski* Trial Judgement]; *Furundzija* Trial Judgement, para. 226; and, *Celebici* Trial Judgement, para. 321.

[442] *Brdjanin* Trial Judgement, para. 267, and accompanying references. As noted in para. 28 of Judgement, the term "Accused" should be understood in a broad sense to include those persons for whom the Accused bear responsibility.

4.1. Responsibility under Article 6(1) of the Statute

4.1.1. Committing

248. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with committing the crimes referred to in the Indictment.[443]

249. Consistent with established jurisprudence, the Chamber adopts the definition of "committing" a crime as "physically perpetrating a crime or engendering a culpable omission in violation of criminal law".[444] The *actus reus* for committing a crime consists of the proscribed act of participation, physical or otherwise direct, in a crime provided for in the Statute, through positive acts or culpable omissions, whether individually or jointly with others.[445]

250. The Chamber takes the view that the *mens rea* requirement for committing a crime is satisfied if the Prosecution proves that the Accused acted with intent to commit the crime, or with the awareness of the substantial likelihood that the crime would occur as a consequence of his conduct.

4.1.2. Committing through Participation in a Joint Criminal Enterprise

251. The Prosecution alleges that the Accused committed the crimes in Counts 1 to 14 of the Indictment through participating in a joint criminal enterprise.[446]

252. The Chamber would like to observe that Article 6(1) of the Statute does not make a specific reference to joint criminal enterprise. The Chamber is satisfied that individual criminal responsibility for participation in a joint criminal enterprise to commit a crime over which the

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[443] Indictment, para. 38.

[444] *Krstic* Trial Judgement, para. 601. *See also Tadic* Appeal Judgement, para. 188; *Limaj et al.* Trial Judgement, para. 509.

[445] *Limaj et al.* Trial Judgement, para. 509; *Kvocka et al.* Trial Judgement, para. 251; *Kordic and Cerkez* Trial Judgement, para. 376; *Kunarac et al.* Trial Judgement, para. 390; *Musema* Trial Judgement, paras 122-123. The Chamber notes that the ICTR Appeals Chamber in *Seromba* held at para. 161 that "'committing' is not limited to direct and physical participation, and that other acts can constitute direct participation in the *actus reus* of the crime. The question of whether an Accused acts with his own hands, *e.g.* when killing people, is not the only relevant criterion." [original footnotes omitted] (*Prosecutor v. Seromba*, ICTR-01-66-A, Judgement (AC), 12 March 2008) [*Seromba* Appeal Judgement]. This definition of committing was applied in the context of genocide and extermination, although the wording of the definition does not restrict it to these crimes alone. In line with Judge Liu's dissent in the Seromba Appeal Judgement, the Chamber does not propose to extend the definition of commission to acts which are not physical or direct.

[446] Indictment, paras 36-38.

Court has jurisdiction is impliedly included in that Article.[447]

253. The Chamber recalls that this mode of liability has been routinely applied in the jurisprudence of the *Ad Hoc* Tribunals.[448] In *Tadic*, the ICTY Appeals Chamber found that, by 1992, joint criminal enterprise was a mode of liability which was "firmly established in customary international law".[449] The Chamber concurs with this position and finds that the concept of criminal responsibility based on participation in a joint criminal enterprise existed under customary international law at the time when the acts charged in the Indictment were alleged to have been committed.

254. The jurisprudence of the *Ad Hoc* Tribunals has identified the following three categories of joint criminal enterprise:

> The first category is a "basic" form of joint criminal enterprise. It is represented by cases where all co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention. An example is a plan formulated by the participants in the joint criminal enterprise to kill where, although each of the participants may carry out a different role, each of them has the intent to kill.
>
> The second category is a "systemic" form of joint criminal enterprise. It is a variant of the basic form, characterised by the existence of an organised system of ill-treatment. An example is extermination or concentration camps, in which the prisoners are killed or mistreated pursuant to the joint criminal enterprise.
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> The third category is an "extended" form of joint criminal enterprise. It concerns cases involving a common purpose to commit a crime where one of the perpetrators commits an act which, while outside the common purpose, is nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example is a common purpose or plan on the part of a group to forcibly remove at gun-point members of one ethnicity from their town, village or region (to effect "ethnic cleansing") with the consequence that, in the course of doing so, one or more of the victims is shot and killed. While murder may not have been explicitly acknowledged to be part of the common purpose, it

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[447] *AFRC* Appeal Judgement, paras 73-74, citing *Tadic* Appeal Judgement, paras 189-193; *CDF* Trial Judgement, paras 207-208.

[448] *Gacumbitsi* Appeal Judgement, paras 158-179; *Stakic* Appeals Judgement, para. 62 referring to *Kvocka et al.* Appeal Judgement, para. 79; *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, paras 463-468 [*Ntakirutimana* Appeal Judgement]; *Prosecutor v. Vasiljevic*, IT-98-32-A, Judgement (AC), 25 February 2004, para. 95 [*Vasiljevic* Appeal Judgement]; *Prosecutor v. Krnojelac*, IT-97-25-A, Judgement (AC), 17 September 2003, paras 29-32 [*Krnojelac* Appeal Judgement]; *Tadic* Appeal Judgement, para. 220.

[449] *Tadic* Appeal Judgement, paras 220, 226. *See also Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 29: "[the ICTY Appeals Chamber] is satisfied that the state practice and *opinio juris* reviewed in that decision was sufficient to permit the conclusion that such a norm existed under customary international law in 1992 when Tadic committed the crimes for which he had been charged and for which he was eventually convicted."

> was nevertheless foreseeable that the forcible removal of civilians at gunpoint might well result in the deaths of one or more of those civilians.[450]

255. This Chamber therefore considers that the three categories of joint criminal enterprise are now settled law under customary international law.

256. Regardless of the category at issue or the charge under consideration, the *actus reus* of the participant in a joint criminal enterprise is common to each of the three above-mentioned categories and comprises three requirements.[451]

257. First, a plurality of persons is required. "They need not be organised in a military, political or administrative structure."[452] However, it needs to be shown that this plurality of persons acted in concert with each other.[453] A common objective in itself is not enough to demonstrate that the plurality of persons acted in concert with each other as different and independent groups may happen to share the same objectives.[454]

258. Second, the existence "of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute is required. There is no need for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts."[455]

259. The common objective can be conceptualised as "fluid in its criminal means." The Chamber considers that it will be proven that the members of a joint criminal enterprise have accepted an expansion of the criminal means of the common objective when leading members of the joint criminal enterprise are made aware of the new types of crimes committed, take no measures to prevent these crimes and persist in the implementation of the common objective.[456]

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[450] *Vasiljevic* Appeal Judgement, paras 97-99 [original footnotes omitted]. *See also Tadic* Appeal Judgement, paras 196, 202, 204.
[451] AFRC Appeal Judgement, para. 75; *Vasiljevic* Appeal Judgement, para. 100.
[452] *Stakic* Appeal Judgement, para. 64. *See also Tadic* Appeal Judgement, para. 227.
[453] *Prosecutor v. Krajisnik*, IT-00-39-T, Judgement (TC), 27 September 2006 [*Krajisnik* Trial Judgement], para. 884.
[454] *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, Judgement (TC), 3 April 2008, para. 139 [*Haradinaj et al.* Trial Judgement]; *Krajisnik* Trial Judgement, para. 884.
[455] *Stakic* Appeal Judgement, para. 64; *Tadic* Appeal Judgement, para. 227.
[456] *See Krajisnik* Trial Judgement, para. 1098: "Whether other crimes were 'original' to the common objective or were added later is of course a matter of evidence, not logical analysis. The Chamber's preference is for a strictly empirical approach which does not speculate about the crime-profile of the original JCE objective, but

260. The Appeals Chamber has clarified that "the requirement that the common plan, design or purpose of a joint criminal enterprise is inherently criminal means that it must either have as its objective a crime within the Statute, or contemplate crimes within the Statute as the means of achieving its objective."[457]

261. Third, the participation of the Accused in the common purpose is required.[458] "This participation need not involve the commission of a specific crime under one of the provisions (for example murder, extermination, torture, rape, *etcetera*), but may take the form of assistance in, or contribution to, the execution of the common purpose."[459] It must be shown that the plurality of persons acted in concert with each other in the implementation of a common purpose.[460] As to the required extent of the participation, the Prosecution need not demonstrate that the Accused's participation is necessary or substantial, but the Accused must at least have made a significant contribution to the crimes for which he is held responsible.[461]

262. Where the joint criminal enterprise is alleged to include crimes committed over a wide geographical area, the Chamber opines that an Accused may be found criminally responsible for his participation in the enterprise, even if his significant contributions to the enterprise occurred only in a much smaller geographical area, provided that he had knowledge of the wider purpose of the common design.[462] It is also legally possible for an Accused to withdraw

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conceptualizes the common objective as fluid in its criminal means. An expansion of the criminal means of the objective is proven when leading members of the JCE are informed of new types of crime committed pursuant to the implementation of the common objective, take no effective measures to prevent recurrence of such crimes, and persist in the implementation of the common objective of the JCE. Where this holds, JCE members are shown to have accepted the expansion of means, since implementation of the common objective can no longer be understood to be limited to commission of the original crimes. With acceptance of the actual commission of new types of crime and continued contribution to the objective, comes intent, meaning that subsequent commission of such crimes by the JCE will give rise to liability under JCE form 1."

[457] *AFRC* Appeal Judgement, para. 80. *See also Martic* Appeal Judgement, paras 112-123, endorsing *Martic* Trial Judgement, para. 442.

[458] *Stakic* Appeal Judgement, para. 64.

[459] *Tadic* Appeal Judgement, para. 227.

[460] *Krajisnik* Trial Judgement, para. 884.

[461] *Brdjanin* Appeal Judgement, para. 430, citing *Kvocka et al.* Appeal Judgement, paras 97-98.

[462] *Tadic* Appeal Judgement, para. 199, fn. 243, citing two cases of the Supreme Court for the British Zone (of occupied Germany) dealing with the participation of accused in the *Kristallnacht* riots: *Case no. 66*, Strafsenat. Urteil vom 8 Februar 1949 gegen S. StS 120/48, vol. II, p. 284-290 and *Case no. 17*, vol. I, pp. 94-98. In the first case, according to the Appeals Chamber in *Tadic*, the Supreme Court held that "it was not required that the accused knew about the rioting in the entire *Reich*. It was sufficient that he was aware of the local action, that he approved it, and that he wanted it 'as his own' ... The fact that the accused participated consciously in the arbitrary measures directed against the Jews was sufficient to hold him responsible for a crime against humanity." In the second case, as summarized by the *Tadic* Appeals Chamber, the Supreme Court held "that it was irrelevant that

from the joint criminal enterprise after which point, he will not bear legal responsibility for the acts of the other members of the group. The identity of the other person or persons making up the plurality may change over the course of the existence of the joint criminal enterprise as participants enter or withdraw from it.[463]

263. The principal perpetrator need not be a member of the joint criminal enterprise, but may be used as a tool by one of the members of the joint criminal enterprise. The Chamber adopts the view of the ICTY Appeals Chamber in *Brdjanin* that "where the principal perpetrator is not shown to belong to the JCE, the trier of fact must further establish that the crime can be imputed to at least one member of the joint criminal enterprise, and that this member – when using the principal perpetrator – acted in accordance with the common plan."[464]

264. The *mens rea* requirements for liability under the first and third categories of joint criminal enterprise, which are pleaded in the Indictment, are different.

265. In the first category of joint criminal enterprise the Accused must intend to commit the crime and intend to participate in a common plan whose object was the commission of the crime.[465] The intent to commit the crime must be shared by all participants in the joint criminal enterprise.[466]

266. The *mens rea* for the third category of joint criminal enterprise is two-fold: in the first place, the Accused must have had the intention to take part in and contribute to the common

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the scale of ill-treatment, deportation and destruction that happened in other parts of the country on that night were not undertaken in this village. It sufficed that the accused participated intentionally in the action and that he was 'not unaware of the fact that the local action was a measure designed to instill terror which formed a part of the nation-wide persecution of the Jews.'"

[463] *Blagojevic and Jokic* Trial Judgement, paras 700-701. *See also United States v. Greifelt et al.*, U.S. Military Tribunal, Judgement, 10 March 1948 ("RuSHA Case"), in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (1951)*, vol. V, pp. 115, 140-141 [*RuSHA* Case]; *United States of America v. Josef Altstoetter, et al. (Case 3)*, U.S. Military Tribunal, October 1946 – April 1949 ("Justice Case"), in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (1951)*, vol. III, pp. 1083, 1086-1087 [*Justice* Case].

[464] *Brdjanin* Appeal Judgement, para. 430. *See also* para. 413 of the same judgement. *See further, Martic* Appeal Judgement, paras 161-195.

[465] *Brdjanin* Appeal Judgement, para. 365; *Tadic* Appeal Judgement, para. 228. *See also Kvocka et al.* Appeal Judgement, para. 82 (requiring "intent to further the common purpose"); and, *Vasiljevic* Appeal Judgement, paras 97, 101.

[466] *Tadic* Appeal Judgement, para. 228.

purpose. In the second place, responsibility under the third category of joint criminal enterprise for a crime that was committed beyond the common purpose of the joint criminal enterprise, but which was "a natural and foreseeable consequence thereof", arises only if the Prosecution proves that the Accused had sufficient knowledge that the additional crime was a natural and foreseeable consequence to him in particular.[467] The Accused must also know that the crime which was not part of the common purpose, but which was nevertheless a natural and foreseeable consequence of it, *might* be perpetrated by a member of the group (or by a person used by the Accused or another member of the group).[468] The Accused must "willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise."[469] The Chamber can only find that the Accused has the requisite intent "if this is the only reasonable inference on the evidence."[470]

4.1.3. Planning

267. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with planning the crimes referred to in the Indictment.[471]

268. The Appeals Chamber has confirmed that "planning" a crime "implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases."[472] The *actus reus* of planning a crime requires that one or more persons design the criminal conduct that constitutes one or more crimes provided for in the Statute and the crime is later perpetrated.[473] It must be demonstrated that the planning was a substantially contributing factor to the criminal conduct.[474] The Chamber is of the opinion that the *mens rea* requirement for planning an act or omission is satisfied if the Prosecution proves that the Accused acted with an intent that a crime provided for in the Statute be committed or with the awareness of the substantial likelihood that the crime would be committed in the execution of that plan.

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[467] *Kvocka et al.* Appeal Judgement, para. 86.
[468] *Brdjanin* Appeal Judgement, para. 411. *See also Stakic* Appeal Judgement, para. 65; *Vasiljevic* Appeal Judgement, para. 99; *Tadic* Appeal Judgement, paras 204, 227-228.
[469] *Kvocka et al.* Appeal Judgement, para. 83.
[470] *Brdjanin* Appeal Judgement, para. 429.
[471] Indictment, para. 38.
[472] AFRC Appeal Judgement, para. 301 affirming AFRC Trial Judgement para. 765.
[473] *See Kordic and Cerkez* Appeal Judgement, para. 26.
[474] *See Kordic and Cerkez* Appeal Judgement, para. 26.

269. If an Accused is found guilty of having committed a crime, that Accused cannot also be convicted of having planned the same crime.[475] Involvement in the planning may be considered an aggravating factor.[476]

4.1.4. Instigating

270. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with instigating the crimes referred to in the Indictment.[477]

271. The Chamber is of the view that "instigating" a crime means urging, encouraging or prompting another person to commit an offence.[478] The *actus reus* required for instigating a crime is an act or omission, covering both express and implied conduct of the Accused,[479] which is shown to be "a factor substantially contributing to the conduct of another person committing the crime."[480] A causal relationship between the instigation and the perpetration of the crime must be demonstrated,[481] although it is not necessary to prove that the crime would not have occurred without the Accused's involvement.[482] To establish the *mens rea* requirement for instigating a crime, the Prosecution must prove that the Accused intended to provoke or induce the commission of the crime or was aware of the substantial likelihood that the crime would be committed as a result of that instigation.

4.1.5. Ordering

272. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with ordering the crimes referred to in the Indictment.[483]

273. The Chamber considers that "ordering" involves a person in a position of authority using that position to compel another to commit an offence.[484] The *actus reus* of ordering requires that a person who is in a position of authority instructs a person in a subordinate

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[475] *See Brdjanin* Trial Judgement, para. 268; *Kordic and Cerkez* Trial Judgement, para. 386.
[476] *See Brdjanin* Trial Judgement, para. 268; *Stakic* Trial Judgement, para. 443.
[477] Indictment, para. 38.
[478] *Kordic and Cerkez* Appeal Judgement, para. 27.
[479] *Oric* Trial Judgement, para. 273; *Brdjanin* Trial Judgement, para. 269; *Blaskic* Trial Judgement, para. 280.
[480] *Kordic and Cerkez* Appeal Judgement, para. 27. *See also CDF* Appeal Judgement, para. 52.
[481] *CDF* Appeal Judgement, para. 54.
[482] *Kordic and Cerkez* Appeal Judgement, para. 27.
[483] Indictment, para. 38.
[484] *Kordic and Cerkez* Appeal Judgement, para. 28.

position to commit an offence.[485] It is the Chamber's opinion that no *formal* superior-subordinate relationship between the superior and the subordinate is required. It is sufficient that there is proof of some position of authority on the part of the Accused that would compel another to commit a crime in compliance with the Accused's order, command or direction.[486] Such authority can be *de jure* or *de facto* and can be reasonably implied.[487] The Chamber is of the view that a "causal link between the act of ordering and the physical perpetration of a crime [...] also needs to be demonstrated as part of the *actus reus* of ordering" but that this "link need not be such as to show that the offence would not have been perpetrated in the absence of the order."[488]

274. The Chamber finds that to establish the *mens rea* requirement for ordering a crime, the Prosecution must prove that the Accused either intended to bring about the commission of the crime or that the Accused gave an order with the awareness of the substantial likelihood that a crime would likely be committed as a consequence of the execution or implementation of that order, command or direction.[489]

4.1.6. Aiding and Abetting

275. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with aiding and abetting in the planning, preparation or execution of the crimes referred to in the Indictment.[490]

276. The Chamber considers that "aiding and abetting" consists of the act of rendering practical or material assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.[491] Aiding and abetting may also consist of an omission,

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[485] *Kordic and Cerkez* Appeal Judgement, para. 28.

[486] *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 361 [*Semanza* Appeal Judgement], referring to *Kordic and Cerkez* Appeal Judgement, para. 28. *See also Gacumbitsi* Appeal Judgement, paras 181-182; *Prosecutor v. Kamuhanda*, ICTR-99-54A-A, Judgement (AC), 19 September 2005, para. 75 [*Kamuhanda* Appeal Judgement]: "To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime, and that his order have a direct and substantial effect on the commission of the illegal act." [original footnotes omitted].

[487] *Limaj et al.* Trial Judgement, para. 515 referring to *Brdjanin* Trial Judgement, para. 270.

[488] *Prosecutor v. Strugar*, IT-01-42-T, Judgement (TC), 31 January 2005, para. 332 [*Strugar* Trial Judgement].

[489] *Blaskic* Appeal Judgement, para. 42.

[490] Indictment, para. 38.

[491] *See*, amongst others, *Tadic* Appeals Judgement, para. 229; *Limaj et al.* Trial Judgement, para. 516; *Krstic* Trial Judgement, para. 601.

providing that the basic elements of aiding and abetting as set out below are satisfied.[492]

277. The *actus reus* of aiding and abetting requires that the Accused perpetrates an act or an omission specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act or omission of the aider and abettor must have a substantial effect upon the perpetration of the crime.[493] The provision of material or physical assistance can also constitute the *actus reus* of aiding and abetting. "[P]roof of a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required."[494]

278. Further, taking into account the specific wording of Article 6(1) of the Statute that "[a] person who [...] aided and abetted *in the planning, preparation or execution* of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime", this Chamber is of the opinion that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime.[495] If the aiding and abetting occurs after the crime, it must be established that a prior agreement existed between the principal and the person who subsequently aided and abetted in the commission of the crime.[496] The Appeals Chamber has confirmed that acts of aiding and abetting "can be made at a time and place removed from the actual crime."[497] The Chamber reiterates, however, that the act of the aider and abettor must have a substantial effect upon the perpetration of the crime.

279. Mere presence at the scene of a crime, without more, will not usually constitute aiding and abetting. There may be situations, however, in which the physical presence at the crime scene of the Accused, combined with his or her position of authority, "allowed the inference that non-interference by the accused actually amounted to tacit approval and encouragement"

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[492] *Prosecutor v. Oric*, IT-03-68-A, Judgement (AC), 3 July 2008, para. 43 [*Oric* Appeal Judgement].
[493] *See Gacumbitsi* Appeal Judgement, para. 140; *Vasiljevic* Appeal Judgement, para. 102; *Oric* Appeal Judgement, para. 43. *See also Blaskic* Appeal Judgement, para. 46 referring to *Furundzija* Trial Judgement, para. 249. *And see also CDF* Appeal Judgement, para. 72: "The Appeals Chamber agrees that 'encouragement' and 'moral support' may constitute the *actus reus*" of aiding and abetting.
[494] *Blaskic* Appeal Judgement, para. 48.
[495] *Blaskic* Appeal Judgement, para. 48.
[496] *Blagojevic and Jokic Trial Judgement*, para. 731.
[497] *CDF* Appeal Judgement, para. 72.

that could amount to aiding and abetting.[498] The Chamber also notes that, in some circumstances, a superior's failure to punish for past crimes might constitute instigation or aiding and abetting for *further* crimes.[499]

280. The Chamber recognises that the *mens rea* of aiding and abetting is the knowledge that the acts performed by the Accused assist the commission of the crime by the principal offender.[500] "Such knowledge may be inferred from all relevant circumstances."[501] The Accused need not share the *mens rea* of the principal offender, but he must be aware of the principal offender's intention.[502] In the case of specific intent offences, the aider and abettor need not possess the principal offender's intent, but must have knowledge that the principal offender possessed the specific intent required.[503] In other words, "it must be shown that the aider and abettor was aware of the essential elements of the crime which was ultimately committed by the principal."[504] The aider and abettor, however, need not know the precise crime that is intended by the principal offender. If he is aware that one of a number of crimes will probably be committed by the principal offender, and one of those crimes is in fact committed, then he has intended to assist or facilitate the commission of that crime, and may be guilty of aiding and abetting.[505]

4.2. Responsibility under Article 6(3) of the Statute

281. In addition or in the alternative, the Prosecution alleges that the Accused are responsible pursuant to Article 6(3) of the Statute for the crimes alleged in Counts 1 through 18 of the Indictment as these crimes were allegedly committed while the Accused were holding

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[498] *Brdjanin* Appeal Judgement, para. 273; *See also Oric* Appeal Judgement, para. 42; *Kayishema and Ruzindana* Appeal Judgement, paras. 201-202.
[499] *See Blaskic* Trial Judgement, para. 337.
[500] *See Vasiljevic* Appeal Judgement, para. 102; *Blaskic* Appeal Judgement, para. 49; *Tadic* Appeal Judgement, para. 229.
[501] *Limaj et al.* Trial Judgement, para. 518 referring to *Celebici* Trial Judgement, para. 328 and to *Tadic* Trial Judgement, para. 676.
[502] *See Aleksovski* Appeal Judgement, para. 162 referring to *Furundzija* Trial Judgement, para. 245. *See also Limaj et al.* Trial Judgement, para. 518; *Brdjanin* Trial Judgement, para. 273; *Kunarac et al.* Trial Judgement, para. 392.
[503] *CDF* Appeal Judgement, para. 367, citing *Ntakirutimana* Appeal Judgement, para. 501 and *Prosecutor v. Ndindabahizi*, ICTR-2001-71-T, Judgement and Sentence (TC), 15 July 2004, para. 457. *See also Prosecutor v. Krstic*, IT-98-33-A, Judgement (AC), 19 April 2004, para. 140 [*Krstic* Appeal Judgement]; *Vasiljevic* Appeal Judgement, para. 142; *Krnojelac* Appeal Judgement, para. 52.
[504] *Aleksovski* Appeal Judgement, para. 162.
[505] *AFRC* Appeal Judgement, para. 243, endorsing *Blaskic* Appeal Judgement, para. 50 and *Prosecutor v. Simic*, IT-95-9-A, Judgement (AC), 28 November 2006, para. 86 [*Simic* Appeal Judgement].

positions of superior responsibility and exercising command and control over their subordinates.[506]

282. The Chamber subscribes to the principle that superior responsibility is today anchored firmly in customary international law.[507] To this end, the Chamber endorses the views of the ICTY Appeals Chamber in *Celebici* that the individual criminal responsibility of superiors for failure to prevent or to punish crimes committed by subordinates was already an established principle of customary international law in 1992[508] whether the crimes charged were committed in the context of an international or an internal armed conflict.[509] The Chamber further adopts the finding of the Appeals Chamber of the *Ad Hoc* Tribunals that the principle of individual criminal responsibility of superiors is applicable to both civilian and military superiors.[510]

283. The Chamber is of the opinion that the nature of responsibility pursuant to Article 6(3) is based upon the duty of a superior to act, which consists of a duty to prevent and a duty to punish criminal acts of his subordinates.[511] Therefore, "it is the failure to act when under a duty to do so which is the essence of this form of responsibility."[512] It is responsibility for an omission[513] in which a superior may be held criminally responsible when he fails to take the necessary and reasonable measures to prevent the criminal act or to punish the offender, as the

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[506] Indictment, paras 34 and 39.

[507] Gerhard Werle, *Principles of International Criminal Law* (The Hague: T.M.C. Asser Press, 2005), para. 372.

[508] *Celebici* Appeal Judgement, para. 195: "[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law".

[509] For the application of the principle of command responsibility to internal armed conflicts, *see Hadzihasanovic et al.* Appeal Decision on Command Responsibility.

[510] *Bagilishema* Appeal Judgement, paras 35, 51-52, citing *Musema* Trial Judgement, para. 135 and *Akayesu* Trial Judgement, para. 491; *Celebici* Appeal Judgement, paras 195-198.

[511] *Halilovic* Trial Judgement, para. 38; *Celebici* Trial Judgement, para. 334.

[512] *Halilovic* Trial Judgement, para. 38 and fn 87.

[513] *See Halilovic* Trial Judgement, para. 54: "The Trial Chamber finds that under Article 7(3) command responsibility is responsibility for an omission. The Commander is responsible for the failure to perform an act required by international law. This omission is culpable because international law imposes an affirmative duty on superiors to prevent and punish crimes committed by their subordinates. Thus "for the acts of his subordinates" as generally referred to in the jurisprudence of the Tribunal does not mean that the Commander shares the same responsibility as the subordinates who committed the crimes, but rather that because of the crimes committed by his subordinates, the Commander should bear responsibility for his failure to act. The imposition of responsibility upon a Commander for breach of his duty is to be weighed against the crimes of his subordinates; a Commander is responsible not as though he had committed the crime himself, but his responsibility is considered in proportion to the gravity of the offences committed. The Trial Chamber considers that this is still in keeping with the logic of the weight which international humanitarian law places on protection values." [original footnotes omitted]

case may be.[514]

284. The Chamber is satisfied that superior responsibility encompasses criminal conduct by subordinates under all modes of participation under Article 6(1) of the Statute.[515] "It follows that a superior can be held criminally responsible for his subordinates' planning, instigating, ordering, committing or otherwise aiding and abetting a crime."[516]

285. The Chamber opines that the following three elements must be satisfied in order to invoke individual criminal responsibility under Article 6(3) of the Statute:

(i) The existence of a superior-subordinate relationship between the superior and the offender of the criminal act;

(ii) The superior knew or had reason to know that the criminal act was about to be or had been committed; and

(iii) The superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the offender thereof.[517]

4.2.1. Superior-Subordinate Relationship

286. Under Article 6(3) of the Statute, a superior is someone who possesses the power or authority in either a *de jure* or a *de facto* capacity to prevent the commission of a crime by a subordinate or to punish the offender of the crime after the crime has been committed.[518] This Chamber considers that it is thus this power or authority of the superior to control the actions of his subordinates which forms the basis of the superior-subordinate relationship.[519]

287. The Appeals Chamber has confirmed that the "effective control" test must be applied in determining whether a superior–subordinate relationship exists.[520] According to this test, the superior must possess the "material ability to prevent or punish criminal conduct".[521] The

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[514] *Bagilishema* Appeal Judgement, para. 35.
[515] *See Oric* Appeal Judgement, para. 21, citing *Nahimana et al.* Appeal Judgement, paras 485-486 and *Blagojevic and Jokic* Appeal Judgement, paras 280, 282.
[516] *Oric* Appeal Judgement, para. 21.
[517] *See Gacumbitsi* Appeal Judgement, para. 143; *Kordic and Cerkez* Appeal Judgement, para. 827; *Blaskic* Appeal Judgement, para. 484; *Aleksovski* Appeal Judgement, para. 72.
[518] *Bagilishema* Appeal Judgement, para. 50; *Celebici* Appeal Judgement, para. 192
[519] *Kordic and Cerkez* Appeal Judgement, para. 840. *See also Strugar* Trial Judgement, para. 359; *Celebici* Trial Judgement, para. 377.
[520] AFRC Appeal Judgement, paras 257 and 289.
[521] *Celebici* Appeal Judgement, para. 256.

indicators of effective control are more a matter of evidence than of substantive law[522] and must be determined on a case-by-case basis.[523] Mere substantial influence that does not meet the threshold of effective control is not sufficient under customary international law to serve as a means of exercising superior criminal responsibility.[524]

288. The power or authority of the superior to prevent or to punish does not arise solely from a *de jure* status of a superior conferred upon him by official appointment.[525] Someone may also be considered to be a superior based on the existence of *de facto* powers or degree of control. This may often be the case in contemporary conflicts where only *de facto* armies and paramilitary groups subordinated to self-proclaimed governments may exist.[526]

289. Moreover, while possession of *de jure* powers may "suggest a material ability to prevent or punish criminal acts of subordinates, it may be neither necessary nor sufficient to prove such ability[...]" The possession of *de jure* authority, without more, provides only some evidence of effective control.[527] In other words, while the *de jure* authority may be evidentially relevant to such a determination,[528] the Prosecution will still bear the burden of proving effective control beyond reasonable doubt.[529]

290. The necessity of proving that the principal perpetrator was the subordinate of the Accused "does not require direct or formal subordination. Rather the Accused has to be, by virtue of his position, senior in some sort of formal or informal hierarchy to the perpetrators."[530] Hierarchy, subordination and chains of command need not be established in the sense of a formal organisational structure as long as the test of effective control is met.[531] Further, "there is no requirement that the superior-subordinate relationship be immediate in

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[522] *See Blaskic* Appeal Judgement, para. 69 referring to *Aleksovski* Appeal Judgement, paras 73-74, 76 and *Celebici* Appeal Judgement, para. 206.
[523] *AFRC* Appeal Judgement, para. 289.
[524] *Celebici* Appeal Judgement, para. 266.
[525] *Gacumbitsi* Appeal Judgement, para. 143; *Bagilishema* Appeal Judgement, para. 50; *Celebici* Appeal Judgement, para. 193.
[526] *Celebici* Appeal Judgement, para. 193.
[527] *Oric* Appeal Judgement, paras 91-92. *See also Prosecutor v. Halilovic*, IT-01-48-A, Judgement (AC), 16 October 2007, para. 85 [*Halilovic* Appeal Judgement].
[528] *Kayishema and Ruzindana* Appeal Judgement, para. 294; *Celebici* Appeal Judgement, para. 197.
[529] *Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-A, Judgement (AC), 22 April 2008, para. 21 [*Hadzihasanovic and Kubura* Appeal Judgement].
[530] *Halilovic* Appeal Judgement, para. 59.
[531] *Celebici* Appeal Judgement, para. 254.

nature for a Commander to be found liable for the acts of his subordinate."[532]

291. A superior-subordinate relationship may be of a military or civilian character.[533] In both cases, the test for establishing the existence of a superior-subordinate relationship is that of effective control.[534] When examining whether a superior exercises effective control over his subordinates, the Chamber must take into account inherent differences in the nature of military and civilian superior-subordinate relationships. Effective control may not be exercised in the same manner by a civilian superior and by a military Commander[535] and, therefore, may be established by the evidence to have been exercised in a different manner. Whether the evidence regarding a civilian's *de jure* or *de facto* authority establishes effective control over subordinates must be determined on a case-by-case basis.

292. In applying the test of effective control, this Chamber will consider *inter alia* the following indicators which would demonstrate that the Accused exercised effective control: the nature of the Accused's position, including his position within the military or political structure; the procedure for appointment and the actual tasks performed;[536] his capacity to issue orders[537] and whether or not such orders are actually executed by his subordinates;[538] the fact that subordinates show greater discipline in the presence of the Accused than when he is absent;[539] the authority of the Accused to invoke disciplinary measures;[540] the nature of negotiations in which the Accused has represented the armed group;[541] and the authority of the Accused to release or transfer prisoners.[542] The Chamber is satisfied that the absence of any other authority over the perpetrators in no way implies that an Accused exercised effective control.[543] Any evidence of prior indiscipline or non-compliance with orders by subordinates is

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[532] *Strugar* Trial Judgement, para. 363.
[533] *Aleksovski* Appeal Judgement, para. 76.
[534] *CDF* Appeal Judgement, para. 175; *AFRC* Appeal Judgement para. 257.
[535] *Bagilishema* Appeal Judgement, paras 52 and 55.
[536] *Halilovic* Appeal Judgement, para. 66.
[537] *Prosecutor v. Strugar*, IT-01-42-A, Judgement (AC), 17 July 2008, para. 253 [*Strugar* Appeal Judgement].
[538] *Strugar* Appeal Judgement, paras 253-254; *Hadzihasanovic and Kubura* Appeal Judgement, para. 199; *Halilovic* Appeal Judgement, para. 70.
[539] *Celebici* Appeal Judgement, para. 206, approving *Celebici* Trial Judgement, para. 743.
[540] *Strugar* Appeal Judgement, paras 260-262.
[541] *Strugar* Appeal Judgement, para. 259.
[542] *Celebici* Appeal Judgement, para. 206, approving *Celebici* Trial Judgement, paras 747 and 764.
[543] *Hadzihasanovic and Kubura* Appeal Judgement, para. 217.

relevant in this determination of effective control.[544] The fact that a superior is compelled to use force to control some of his subordinates does not automatically lead to the conclusion that the superior does not exercise effective control over them as this could, in some situations, even demonstrate that the superior has the material ability to prevent and punish the commission of crimes.[545]

293. The Chamber has also considered indicia which may be particularly useful in assessing the ability of superiors in irregular armies to exercise effective control such as: the superior's entitlement to looted property and natural resources; control over the fate of vulnerable persons such as women and children; access to or control of arms, ammunition and communications equipment; protection by loyal personal security guards; the propagation of the ideology of the movement to which the subordinates adhere; the interaction with external bodies or individuals on behalf of the group; the ability to reward himself with positions of power and influence and to intimidate subordinates into compliance.[546]

294. This Chamber has also considered *when* a superior may be held liable for a failure to fulfil his duty to prevent or punish and, in particular, whether a superior may be held liable for a failure to punish his subordinates for an act that occurred before he assumed effective control over those subordinates.

295. The Chamber notes that, by a three-two majority, the ICTY Appeals Chamber in the *Hadzihasanovic et al.* case held that individual criminal responsibility for superior command responsibility did not exist at customary international law for crimes that occurred before an Accused became a superior over the subordinates in question.[547] Justice Shahabuddeen and Justice Hunt strongly dissented.[548] In the most recent Appeal Judgement in *Oric*, the majority

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[544] *Strugar* Appeal Judgement, para. 257.

[545] *Hadzihasanovic and Kubura* Appeal Judgement, para. 228.

[546] AFRC Trial Judgement, paras 787-788.

[547] *See Hadzihasanovic et al.* Appeal Decision on Command Responsibility, para. 51: "[The ICTY] Appeals Chamber holds that an accused cannot be charged under Article 7(3) of the [ICTY] Statute for crimes committed by a subordinate before the said accused assumed command over that subordinate. The Appeals Chamber is aware that views on this issue may differ. However, the Appeals Chamber holds the view that this Tribunal can impose criminal responsibility only if the crime charged was clearly established under customary law at the time the events in issue occurred. In case of doubt, criminal responsibility cannot be found to exist, thereby preserving full respect for the principle of legality."

[548] *Hadzihasanovic et al.* Appeal Decision on Command Responsibility, Partial Dissenting Opinion of Judge Shahabuddeen [*Hadzihasanovic et al.* Appeal Decision, Dissenting Opinion of Judge Shahabuddeen];

of the Chamber, which included Justice Shahabuddeen, declined to pronounce on the issue on the basis that it was not necessary based on the particular findings in the *Oric* Appeal. Justice Shahabuddeen clearly stated, however, that he agreed with the two dissenting Judges that the holding in the *Hadzihasanovic et al.* was wrong in law.[549] This Chamber is not bound by decisions of the ICTY Appeals Chamber, but will, however, consider all relevant jurisprudence and be guided by these decisions as appropriate.[550]

296. This Chamber has already held that the individual criminal responsibility of superiors for failure to prevent or to punish crimes committed by subordinates is firmly established in customary international law. The Chamber considers that any application of the principle of superior responsibility that can reasonably fall within the application of this principle would therefore also exist at customary international law.[551] Customary international law cannot be expected to address every possible factual permutation and if a particular factual situation can reasonably fall within the application of the principle of superior command responsibility as it exists at customary international law, then the principle can be so applied.

297. Article 6(3) of the Statute provides that a Commander is criminally responsible if he "knew or had reason to know that the subordinate was about to commit such [criminal] acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof." This language is identical to Article 6(3) of the ICTR Statute and Article 7(3) of the ICTY Statute.

298. The language of this provision is broad, and clearly envisions a superior's responsibility for preventing acts that are about to be committed and for punishing acts that have already

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Hadzihasanovic et al. Appeal Decision on Command Responsibility, Separate and Partially Dissenting Opinion of Judge David Hunt *Command Responsibility Appeal* [*Hadzihasanovic et al.* Appeal Decision, Dissenting Opinion of Judge Hunt].

[549] *Oric* Appeal Judgement, Declaration of Judge Shahabuddeen, para. 3. Several trial chambers have expressed their disagreement with the finding in the *Hadzihasanovic et al.* Appeal Decision on Command Responsibility: *Oric* Trial Judgement; *Hadzihasanovic and Kubara* Trial Judgement and *Kordic and Cerkez* Trial Judgement.

[550] *Kamara* Decision on Form of Indictment, paras 24-25.

[551] *Hadzihasanovic et al.* Appeal Decision on Command Responsibility, para. 12: "[T]o hold that a principle was part of customary international law, it has to be satisfied that State practice recognized the principle on the basis of supporting *opinio juris*. However, it also considers that, where a principle can be shown to have been so established, it is not an objection to the application of the principle to a particular situation to say that the situation is new if it reasonably falls within the application of the principle." *See also: Hadzihasanovic et al.* Appeal Decision on Command Responsibility, Separate and Partially Dissenting Opinion of Judge David Hunt, para. 8; *Oric* Appeal Judgement, Declaration of Judge Shahabuddeen, para. 17.

been committed.[552] A superior is not held criminally liable for the criminal act itself, but rather for a failure in his duty to either prevent or punish the subordinate as the case may be. The Chamber adopts the statement of the ICTY Appeals Chamber in *Krnojelac* that:

> It cannot be overemphasised that, where superior responsibility is concerned, an accused is not charged with the crimes of his subordinates but with his failure to carry out his duty as a superior to exercise control.[553]

299. Given this basis of superior responsibility, the Chamber considers that the focus of the liability must be on the time during which the superior failed in his duty to prevent or punish. Thus, the Chamber is satisfied that, in order to incur criminal responsibility as a superior, the superior must have had effective control over the perpetrator at the time at which the superior is said to have failed to exercise his powers to prevent or to punish.[554] While in practice the superior will also often have effective control at the time that the subordinate commits or is about to commit a criminal act, this in itself is not required. Thus, if a superior assumes command after a crime has been committed by his subordinates and he knows or has reason to know that such a crime has been committed, the Chamber is of the opinion that to assume his responsibility as a superior officer, he will have the duty to punish the perpetrators from the moment he assumes effective control.

300. The Chamber considers that this principle was properly stated by the Trial Chamber in *Oric*:

> The superior must certainly have effective control of the relevant subordinates at the time when measures of investigation and punishment are to be taken against them. Such a link, however, appears less essential, if necessary at all, with regard to the time at which the crime was committed. The duty to prevent calls for action by the superior prior to the commission of the crime, and thus presupposes his power to control the conduct of his subordinates. The duty to punish, by contrast, follows the commission of a crime of which the superior need not have been aware, and thus at the moment of commission was in fact out of his or her control to prevent. Since a superior in such circumstances is obliged to take punitive measures notwithstanding his or her ability to prevent the crime due to his lack or her lack of awareness and control, it seems only logical that such an obligation would also extend to the situation wherein there has been a change of command following the commission of a crime by a subordinate. The new Commander in

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[552] *See*, for example, *Celebici* Appeal Judgement, para. 192.

[553] *Krnojelac* Appeal Judgement, para. 171. *See also*: *Oric* Appeal Judgement, Declaration of Judge Shahabuddeen, paras 19-25; *Oric* Appeal Judgement, Dissenting Opinion of Judge Liu, paras 31-32; *Hadzihasanovic et al.* Appeal Decision, Dissenting Opinion of Judge Hunt, para. 9.

[554] *Oric* Appeal Judgement, Dissenting Opinion of Judge Liu, para. 2.

> such a case, now exercising power over his or her subordinates and being made aware of their crimes committed prior to the change of command, for the sake of coherent prevention and control, should not let them go unpunished.... Consequently, for a superior's duty to punish, it should be immaterial whether he or she had assumed control over the relevant subordinates prior to their committing the crime.[555]

301. The Chamber is also satisfied that this holding is consistent with the ICTY Appeals Chamber in *Celebici* which concluded that:

> As long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control.[556]

302. The Chamber has also considered the sources of law relied on by the majority in the *Hadzihasanovic et al.* Appeal Decision to determine the content of superior responsibility at customary international law. Article 86(2) of Additional Protocol I provides:

> The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

303. Similarly, in relation to the duties of Commanders, Article 87(3) of Protocol I states:

> The High Contracting Parties and Parties to the conflict shall require any Commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

304. The Chamber is of the opinion that both of these provisions must be read together to properly understand their full content.[557] While Article 86(2) refers to knowledge that a

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[555] *Oric* Trial Judgement, para. 335. The Trial Chamber found, however, that it was bound to apply the decision of the Appeals Chamber in *Hadzihasanovic et al.* Appeal Decision on Command and thus did not apply superior responsibility in cases where the superior had not exercised effective control at the time of the criminal act.

[556] *Celebici* Appeal Judgement, para. 198.

[557] ICRC Commentary on Additional Protocols, Additional Protocol I, Article 86(2), para. 3541. *See also Celebici* Appeal Judgement, para. 237: "Article 87 requires parties to a conflict to impose certain duties on Commanders, including the duty in Article 87(3) to 'initiate disciplinary or penal action' against subordinates or other persons under their control who have committed a breach of the Geneva Conventions or of the Protocol. That duty is limited by the terms of Article 87(3) to circumstances where the Commander 'is aware' that his subordinates are

subordinate was committing or was about to commit a crime, Article 87(3) places a duty on Commanders whose subordinates are "going to commit or have committed a breach". Thus, while the majority of the ICTY Appeals Chamber in *Hadzihasanovic et al.* relied on Article 86(2) to conclude that a superior could only be liable for subordinates who were under his effective control at the time of the criminal act,[558] this Chamber concludes that this interpretation is not consistent with the Articles when read together. Moreover, this Chamber considers that such an interpretation would be inconsistent with the object and purpose of the Additional Protocol and would "leave a gaping hole in the protection which international humanitarian law seeks to provide for the victims of the crimes committed contrary to that law."[559]

305. The Chamber has also considered Article 28 of the ICC Statute which, in a very complex provision compared to that of Article 6(3) of the SCSL Statute, refers to a military Commander who "either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes."[560] While this Chamber does consider that the ICC Statue has value in determining the state of customary international law,[561] the Chamber is also cognisant of the fact that the ICC Statute was also often the product of delicate negotiations and compromises.[562] Furthermore, if this provision is interpreted to mean that the Commander must have known of the crimes either before or during their commission, then this would also mean that superiors who exercised effective control at the time of the criminal acts, but only found out about the crimes after they had been completed, would be under no obligation to either report the matter for investigation or to punish.[563]

306. For all of these reasons, this Chamber is satisfied that the principle of superior responsibility as it exists in customary international law does include the situation in which a

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going to commit or have committed such breaches. Article 87 therefore interprets Article 86(2) as far as the duties of the Commander or superior are concerned, but the criminal offence based on command responsibility is defined in Article 86(2) only." *See further Oric* Appeal Judgement, Partially Dissenting Opinion and Declaration of Judge Liu, paras 14-21.

[558] *Hadzihasanovic et al.* Appeal Decision on Command Responsibility, para. 47.

[559] *Hadzihasanovic et al.* Appeal Decision, Dissenting Opinion of Judge Hunt, para. 22. *See also Oric* Appeal Judgement, Dissenting Opinion of Judge Liu, para. 30.

[560] ICC Statute, Article 28(a)(i).

[561] *Tadic* Appeal Judgement, para. 223 citing with approval *Furundzija* Trial Judgement, para. 227.

[562] *Hadzihasanovic et al.* Appeal Decision, Dissenting Opinion of Judge Hunt, paras 30-31.

[563] *Oric* Appeal Judgement, Dissenting Opinion of Judge Liu, para. 25; *Hadzihasanovic et al.* Appeal Decision, Dissenting Opinion of Judge Shahabuddeen, para. 20.

Commander can be held liable for a failure to punish subordinates for a crime that occurred before he assumed effective control. While it must clearly be established that the superior exercised effective control over the subordinate who committed the crime at the time that there was an alleged failure in his duty to punish, it is not necessary that the effective control also existed at the time of the criminal act.

307. Similarly, in order to hold a Commander liable for the acts of subordinates who operated under his command on a temporary basis, it must be demonstrated that the Commander had "effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes [...]".[564] This Chamber understands that the relevant time period for the effective control of the superior relates again to the time during which the superior is alleged to have failed to prevent or failed to punish the subordinates for the criminal acts.

4.2.2. Mental Element: the Superior Knew or Had Reason to Know

308. In order to hold a superior responsible under Article 6(3) of the Statute for crimes committed by a subordinate, the Chamber is of the opinion that the Prosecution must prove that the superior knew or had reason to know that his subordinate was about to commit or had committed such crimes. Responsibility under Article 6(3) of the Statute is not a form of strict liability.[565]

309. The actual knowledge of the superior, that is, that he knew that his subordinate was about to commit or had committed the crime, may not be presumed and may be established by direct evidence or through circumstantial evidence from which it may be inferred that the Commander had in fact acquired such knowledge.[566] The superior must have knowledge of the alleged criminal conduct of his subordinates and not simply knowledge of the occurrence of the crimes themselves.[567] Various factors or indicia may be considered by the Chamber when determining the actual knowledge of the superior. Such indicia would include: the number,

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[564] *Celebici* Appeal Judgement, 198.

[565] *See Celebici* Appeal Judgement, para. 239: "The Appeals Chamber would not describe superior responsibility as a vicarious liability doctrine, insofar as vicarious liability may suggest a form of *strict* imputed liability."

[566] *Kordic and Cerkez* Trial Judgement, para. 427; *Blaskic* Trial Judgement, para. 307; *Celebici* Trial Judgement, para. 386.

[567] *Oric* Appeal Judgement, paras 57-59.

type and scope of the illegal acts; the time during which the illegal acts occurred; the number and type of subordinates involved; the logistics involved, if any; the means of communication available; the geographical location of the acts; the widespread occurrence of the acts; the tactical tempo of operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the superior at the time and the proximity of the acts to the location of the superior.[568]

310. The Chamber accepts the jurisprudence of the *Ad Hoc* Tribunals that the "had reason to know" standard will only be satisfied if information was available to the superior which would have put him on notice of offences committed by his subordinates or about to be committed by his subordinates.[569] Such information need not be such that, by itself, it was sufficient to compel the conclusion of the existence of such crimes.[570] It need not, for instance, take "the form of specific reports submitted pursuant to a monitoring system" and "does not need to provide specific information about unlawful acts committed or about to be committed".[571] It can be general in nature, but it must be sufficiently alarming so as to alert the superior to the risk of the crimes being committed or about to be committed,[572] and to justify further inquiry in order to ascertain whether indeed such crimes were committed or were about to be committed by his subordinates.[573] The superior need only have notice of a *risk* that crimes might be carried out and there is no requirement that this be a strong risk or a substantial likelihood.[574]

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[568] *Blaskic* Appeal Judgement, para. 57 endorsing *Blaskic* Trial Judgement, para. 307. *See also Limaj et al.* Trial Judgement, para. 524; *Strugar* Trial Judgement, para. 368; *Celebici* Trial Judgement, para. 386. *See further Oric* Trial Judgement, fn 909: "With regard to geographical and temporal circumstances, it has to be kept in mind that the more physically distant the commission of the subordinate's acts from the superior's position, the more difficult it will be, in the absence of other indicia, to establish that the superior had knowledge of them. Conversely, if the crimes were committed close to the superior's duty-station, the easier it would be to establish a significant indicium of the superior's knowledge, and even more so if the crimes were repeatedly committed."

[569] *Celebici* Appeal Judgement, para. 241, subsequently followed by *Krnojelac* Appeal Judgement, para. 154, *Blaskic* Appeal Judgement, para. 62, *Galic* Appeal Judgement, para. 184.

[570] *See Limaj et al.* Trial Judgement, para. 525; *Strugar* Trial Judgement para. 369; *Celebici* Trial Judgement, para. 393.

[571] *Galic* Appeal Judgement, para. 184 citing *Celebici* Appeal Judgement, para. 238. "For instance, a military Commander who has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, may be considered as having the required knowledge." (*Celebici* Appeal Judgement, para. 238).

[572] *See Krnojelac* Appeal Judgement, paras 155, 169.

[573] *See Limaj et al.* Trial Judgement, para. 525 and footnoted references.

[574] *Strugar* Appeal Judgement, para. 304.

311. While a superior's knowledge of and failure to punish his subordinates' past offences is insufficient on its own to conclude that the superior knew that future offences would be committed, such knowledge may constitute sufficiently alarming information to justify further inquiry.[575] The Chamber endorses the views of the ICTY Appeals Chamber that:

> [A] Trial Chamber may take into account the failure by a superior to punish the crime in question. Such a failure is indeed relevant to the determination of whether, in the circumstances of a case, a superior possessed information that was sufficiently alarming to put him on notice of the risk that similar crimes might subsequently be carried out by subordinates and justify further inquiry. In this regard, the Appeals Chamber stresses that a superior's failure to punish a crime of which he has actual knowledge is likely to be understood by his subordinates at least as acceptance, if not encouragement, of such conduct with the effect of increasing the risk of new crimes being committed.[576]

312. The superior cannot be held liable for having failed in his duty to obtain such information in the first place.[577] The information in question must be *available* to the superior, but the superior need not have actually acquainted himself with the information.[578] Thus, the superior cannot remain wilfully blind to information that is available to him.[579] In any event, an assessment of the mental element required by Article 6(3) of the Statute should be conducted in the particular circumstances of each case, taking into account the specific situation of the superior concerned at the time in question.[580]

4.2.3. Necessary and Reasonable Measures

313. The Chamber is of the opinion that a superior may be held responsible pursuant to Article 6(3) of the Statute if he has failed to take necessary and reasonable measures to prevent the commission of a crime or punish the perpetrators thereof. Necessary measures are those measures appropriate for the superior to discharge his obligation by showing that he genuinely tried to prevent or punish a crime. Reasonable measures can be said to be those "reasonably falling within the material powers of the superior."[581] The determination of what constitutes necessary and reasonable measures that fulfil the duty of the Commander must be made on a

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[575] See *Hadzihasanovic and Kubura* Appeal Judgement, para. 30; *Kmojelac* Appeal Judgement, para. 169.
[576] *Hadzihasanovic and Kubura* Appeal Judgement, para. 30. See also *Strugar* Appeal Judgement, para. 301.
[577] *Celebici* Appeal Judgement, para. 226.
[578] *Celebici* Appeal Judgement, para. 239.
[579] *Halilovic* Trial Judgement, para. 69, relying on *Celebici* Trial Judgement, para. 387.
[580] *Kmojelac* Appeal Judgement, para. 156; *Celebici* Appeal Judgement, para. 239.
[581] *Halilovic* Appeal Judgement, para. 63.

case-by-case basis and is not a matter of substantive law, but of evidence.[582]

314. Under Article 6(3), the superior has a duty both to prevent the commission of the offence and punish the perpetrators. These are not alternative obligations – they involve different crimes committed at different times: "the failure to punish concerns past crimes committed by subordinates, whereas the failure to prevent concerns future crimes of subordinates."[583] The duty to prevent arises from the time a superior acquires knowledge, or has reason to know that a crime is being or is about to be committed, while the duty to punish arises after the superior acquires knowledge of the commission of the crime.[584] "A superior must act from the moment that he acquires such knowledge. His obligations to prevent will not be met by simply waiting and punishing afterwards."[585]

315. The Chamber is of the opinion that whether a superior has discharged his duty to prevent the commission of a crime will depend on his material ability to intervene in a specific situation. In making this determination, the Chamber may take into account factors such as those which have been enumerated in the *Strugar* case on the basis of the case law developed by the military tribunals in the aftermath of World War II: the superior's failure to secure reports that military actions had been carried out in accordance with international law, the failure to issue orders aimed at bringing the relevant practices into accord with the rules of war, the failure to protest against or to criticise criminal action, the failure to take disciplinary measures to prevent the commission of atrocities by the fighters under the superior's command and the failure to insist before a superior authority that immediate action be taken.[586] As part of his duty to prevent subordinates from committing crimes, the Chamber is of the view that a superior also has the obligation to prevent his subordinates from following unlawful orders given by other superiors.

316. The Chamber notes that a causal link between the superior's failure to prevent his subordinates' crimes and the occurrence of these crimes is not an element of the superior's

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[582] *Hadzihasanovic and Kubura* Appeal Judgement, para. 151; *Halilovic* Appeal Judgement, para. 63; *Blaskic* Appeal Judgement, para. 72.
[583] *Blaskic* Appeal Judgement, para. 83.
[584] *Limaj et al.* Trial Judgement, para. 527 referring to *Blaskic* Appeal Judgement, para. 83 and *Kordic and Cerkez* Trial Judgement, paras 445-446.
[585] *Limaj et al.* Trial Judgement, para. 527. *See also Strugar* Trial Judgement, para. 373.

responsibility; it is a question of fact rather than of law.[587] "Command responsibility is responsibility for omission, which is culpable due to the duty imposed by international law upon a Commander" and does not require his involvement in the crime.[588]

317. The Chamber is of the opinion that the duty imposed on a superior to punish subordinate offenders includes the obligation to investigate the crime or to have the matter investigated to establish the facts in order to assist in the determination of the proper course of conduct to be adopted.[589] The superior has the obligation to take active steps to ensure that the offender will be punished.[590] The Chamber further takes the view that, in order to discharge this obligation, the superior may exercise his own powers of sanction, or if he lacks such powers, report the offender to the competent authorities.[591]

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[586] *Strugar* Trial Judgement, para. 374 and footnoted references. *See* also *Limaj et al.* Trial Judgement, para. 528; *Halilovic* Trial Judgement, para. 89; *Oric* Trial Judgement, para. 331.

[587] *Hadzihasanovic and Kubura* Appeal Judgement, paras 38-40; *Kordic and Cerkez* Appeal Judgement, para. 832; *Blaskic* Appeal Judgement, para. 77.

[588] *Hadzihasanovic* Appeal Judgement, para. 39 endorsing *Halilovic* Trial Judgement, para. 78. *See also Oric* Trial Judgement, para. 293.

[589] *Halilovic* Trial Judgement, para. 97; *Strugar* Trial Judgement, para. 376; *Kordic and Cerkez* Trial Judgement, para. 446.

[590] *Limaj et al.* Trial Judgement, para. 529; *Halilovic* Trial Judgement, para. 98.

[591] *Hadzihasanovic and Kubura* Appeal Judgement, para. 154; *Halilovic* Appeal Judgement, para. 182.

IV. CHALLENGES TO THE FORM OF THE INDICTMENT

1. General Principles of Pleading

318. Under Article 17(4)(a) of the Statute, an accused has the right to be informed promptly and in detail in a language that he or she understands of the nature and cause of the charge against him or her. Article 17(4)(b) provides that every accused has the right to adequate time and facilities for the preparation of his defence. Rule 47(C) of the Rules of Procedure and Evidence of the Special Court ("the Rules") states:

> The Indictment shall contain, and be sufficient if it contains, the name and particulars of the suspect, a statement of each specific offence of which the named suspect is charged and a short description of the particulars of the offence. It shall be accompanied by a Prosecutor's case summary briefly setting out the allegations he proposes to prove in making his case.

319. Rule 26*bis* is also relevant. It provides, *inter alia*, that:

> The Trial Chamber and the Appeals Chamber shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted [...] with full respect for the rights of the Accused [...].

320. These provisions enshrine the right of an accused to adequately and effectively prepare his defence. As we held in our seminal decision on the Sesay Defence preliminary challenge to the form of the Indictment, in order for the Accused "to adequately and effectively prepare his defence, the Indictment must plead with sufficient specificity or particularity the facts underpinning the specific crimes."[592] The Indictment is the foundational-charging instrument upon which each prosecution rests and "must embody a concise statement of the facts specifying the crime or crimes preferred against the accused."[593]

321. The Appeals Chamber has held that the Prosecution must plead material facts with a "sufficient degree of specificity"[594] which requires that an Indictment contain "a concise

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[592] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2003-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003, para. 6 [*Sesay* Decision on Form of Indictment]; *Prosecutor v. Kondewa*, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, SCSL-2003-12-PT, 27 November 2003, para. 6 [*Kondewa* Decision on Form of Indictment].

[593] *Sesay* Decision on Form of Indictment, para. 6; *Kondewa* Decision on Form of Indictment, para. 6.

[594] *AFRC* Appeal Judgement, para. 37. The Appeals Chamber also considered the required degree of specificity in an indictment at paras 41, 81-87, 99-110, 114-115 of the *AFRC* Appeal Judgement and in the *CDF* Appeal

statement of the facts of the case and of the crime with which the suspect is charged."[595] Nevertheless, "there is a minimum level of information that must be provided by the Indictment; there is a floor below which the level of information must not fall if the indictment is to be valid as to its form."[596]

322. An indictment must state the material facts underpinning the charges, but need not elaborate on the evidence by which such material facts are to be proven.[597] What is material depends on the facts of the particular case and cannot be decided in the abstract.[598]

323. In addition, this Chamber has held that the following factors are relevant to determining the degree of specificity required in an Indictment:[599]

(i) The nature of the allegations;

(ii) The nature of the specific crimes charged;

(iii) The circumstances under which the crimes were allegedly committed;

(iv) The duration of time over which the said acts or events constituting the crimes occurred;

Judgement, paras 442-443. This Chamber also has considered the specificity with which the Indictment must be pleaded in the *Sesay* Decision on Form of Indictment; *Prosecutor v. Kanu*, SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 19 November 2003 [*Kanu* Decision on Form of Indictment]; and in *Kondewa* Decision on Form of Indictment; *Kamara* Decision on Form of Indictment; and in *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment (TC), 29 November 2004, paras 22-29 [*Norman* Decision on Service and Arraignment], which findings were not disturbed on appeal: *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Decision on Amendment of the Consolidated Indictment (AC), 16 May 2005, esp. para. 53 [*Norman* Appeal Decision on Amendment of Indictment].

[595] *Prosecutor v. Kvocka, Kos, Radic, Zigic*, IT-98-30/1, Decisions on Defence Preliminary Motions on the Form of the Indictment (TC), 12 April 1999, para. 14 [*Kvocka et al.* Decision on Form of Indictment], cited with approval in the *AFRC* Appeal Judgement, para. 37.

[596] *Kvocka et al.* Decision on Form of Indictment, para. 14, cited with approval in the *AFRC* Appeal Judgement at para. 37; this principle was also applied by this Chamber: *Sesay* Decision on Form of Indictment, para. 6; *Kanu* Decision of Form of Indictment, paras 6, 10; *Kamara* Decision on Form of Indictment, para. 33.

[597] *Sesay* Decision on Form of Indictment, para. 6; *Kanu* Decision on Form of Indictment, paras 6, 10; *Kamara* Decision on Form of Indictment, para. 33; *Prosecutor v. Krnojelac*, IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment (TC), 24 February 1999, para. 12 [*Krnojelac* First Decision on Form of Indictment].

[598] *AFRC* Appeal Judgement, paras 37-38, 40; *Sesay* Decision on Form of Indictment, para. 6; *Kanu* Decision on Form of Indictment, paras 6, 10; *Kamara* Decision on Form of Indictment, para. 33; *Norman* Decision on Service and Arraignment, para. 24; *Kupreskic et al.* Appeal Judgement, para. 89.

[599] *Sesay* Decision on Form of Indictment, para. 8; *Kanu* Decision on Form of Indictment, para. 42; *Kondewa* Decision on Form of Indictment, para. 6. *See also Norman* Service and Arraignment Decision, para. 28 and the Dissenting Opinion of Judge Thompson, para. 10; *Kvocka et al.* Appeal Judgement, para. 28.

(v) The totality of the circumstances surrounding the commission of the alleged crimes; and

(vi) The Indictment as a whole and not isolated and separate paragraphs.[600]

324. The Chamber is strongly of the view that it must evaluate the adequacy of an Indictment considering all of the circumstances of this particular case. In the final analysis, the Chamber cannot require the Prosecution to have done the impossible when it drafted the Indictment, but the Prosecution bears the burden of proving the case that it pleaded beyond reasonable doubt.[601]

1.1. The Degree of Specificity Required in relation to Allegations pursuant to Article 6(1)

325. The Appeals Chamber held that where direct participation by an accused is alleged, the Prosecution must provide particulars in the Indictment.[602] Where the Prosecution alleges that an accused has personally done the acts in question, in as far it is possible, the Prosecution should plead in the Indictment:

> The identity of the victim, the places and the approximate date of those acts and the means by which the offence was committed. Where the prosecution is unable to specify any of these matters, it cannot be obliged to perform the impossible. Where the precise date cannot be specified, a reasonable range of dates may be sufficient. Where a precise identification of the victim or victims cannot be specified, a reference to their category or position as a group may be sufficient. Where the prosecution is unable to specify matters such as these, it must make it clear in the indictment that it is unable to do so and that it has provided the best information it can.[603]

326. It is the considered view of the Chamber that where an accused is alleged to be individually responsible for crimes charged in the Indictment but is not alleged to have committed them personally, the standard of specificity to be required in the Indictment is somewhat lower. In such a situation, it is the acts by which an accused is said to have ordered, planned, committed, instigated, or otherwise aided and abetted in the planning, preparation or execution of the crimes charged which are most material. Where the Prosecution is able to

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[600] On this last point, see specifically the *AFRC* Appeal Judgement, para. 81.
[601] *Kanu* Decision on Form of Indictment, para. 25.
[602] *AFRC* Appeal Judgement, para. 38.
[603] *Prosecutor v. Brdjanin and Talic*, IT-99-36-1, Decision on Objections by Momir Talic to the Form of the Amended Indictment (TC), 20 February 2001, para. 22 [*Talic* Decision on Form of Indictment], cited with approval in *AFRC* Appeal Judgement, para. 38 and in the *Norman* Service and Arraignment Decision, para. 25. See also *Seromba* Appeal Judgement, para. 100.

provide such particulars, it should put an accused on notice of the acts of others for which he is alleged to be responsible.[604]

1.2. The Degree of Specificity Required in relation to Allegations pursuant to Article 6(3)

327. Where the criminal responsibility of an accused person for an offence is based on an allegation of superior responsibility, the Prosecution must plead "the relationship of the accused to his subordinates, his knowledge of the crimes and the necessary and reasonable measures that he failed to take to prevent the crimes or to punish his subordinates" with a sufficient degree of specificity.[605] Therefore, an Indictment must particularise both the conduct of an accused by which he is alleged to be responsible as a superior and the alleged criminal conduct of his subordinates.[606]

328. With respect to the conduct of persons other than an accused under Article 6(3), although the Prosecution must still provide the particulars which it is able to give, the relevant allegations will usually be pleaded with a relatively lower degree of precision than allegations made under Article 6(1). A relatively lower degree of specificity is required in an Indictment in relation to allegations of superior responsibility. This is because the details of these acts, including the identities of victims and physical perpetrators, may be unknown. Moreover, the acts themselves generally will not "be greatly in issue".[607]

1.3. Exceptions to the Specificity Requirements

329. The Chamber considers that the failure to plead the material facts underlying the offences in an Indictment renders it vague and unspecific, and in many cases defective. The Appeals Chamber, however, has recognized that there is a "narrow exception" to the specificity requirement for Indictments at international criminal tribunals, holding that "[i]n some cases, the widespread nature and sheer scale of the alleged crimes make it unnecessary and

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[604] *Norman* Service and Arraignment Decision, para. 23; *Prosecutor v. Krnojelac*, IT-97-25-T, Decision on Form of Second Amended Indictment (TC), 11 May 2000, para. 18 [*Krnojelac* Second Decision on Form of Indictment].
[605] *AFRC* Appeal Judgement, para. 39. *See also Krnojelac* Second Decision on Form of Indictment, para. 18.
[606] *Prosecutor v. Ntagerura, Bagambiki and Imanishimwe*, ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004, para. 35, [*Ntagerura et al.* Appeal Judgement] cited with approval by the Appeals Chamber the AFRC Appeal Judgement, para. 39.
[607] *Krnojelac*, Second Decision on Form of Indictment, para. 18. *See also Sesay* Decision on Form of Indictment, para. 14; *Norman* Service and Arraignment Decision, para. 24.

impracticable to require a high degree of specificity."[608] The Chamber will keep in mind the nature and scale of the conflict when evaluating the arguments of the Accused with respect to the degree of specificity required in the Indictment.[609]

330. The Chamber is of the view that, in addition to the "criminogenic setting" of the alleged crimes themselves,[610] the particular context in which the RUF trial unfolded is a pertinent factor to consider when determining the level of specificity with which it was practicable to expect the Prosecution to plead the allegations in the Indictment. The fact that the investigations and trials were intended to proceed as expeditiously as possible in an immediate post-conflict environment is particularly relevant.

331. Nevertheless, in an indictment, the Prosecution must "indicate its best understanding of the case against the accused".[611] The Prosecution may not rely on weakness of its own investigation to justify its failure to plead material facts in an Indictment.[612] Nor may the Prosecution omit aspects of its main allegations in an Indictment "with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds."[613] An Indictment must provide an accused with sufficient information to understand the nature of the charges against him and to prepare his defence.[614] Therefore, a Chamber

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[608] *AFRC* Appeal Judgement, para. 41; *Sesay* Decision on Form of Indictment, para. 9; *Ntakirutimana* Appeal Judgement, para. 73; *Gacumbitsi* Appeal Judgement, para. 89; *Muvunyi* Appeal Judgement, para. 60. *See also, Justice* Case, pp. 984-985, holding that "simple murder and isolated instances of atrocities do not constitute the gravamen of the charge. Defendants are charged with crimes of such immensity that mere specific instances of criminality appear insignificant by comparison. *See further United States of America v. Ernst von Weizsaecker et al.*, Motion by General Spokesman for Defence Counsel, 18 December 1947 and Order of the Tribunal Denying Defense Motions, Jan. 5, 1948, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, vol. XV, pp. 254-256, 258-260 respectively: In response to a defence objection that the general phrasing of the Indictment failed to clearly define the particular participation of the individual defendant in the crimes alleged, the Tribunal held that "[t]he crimes against the defendants in this indictment do not consist of single or isolated acts but of a long and continuous series resulting from plans and schemes carefully laid out and matured long prior to their execution; they differ from usual offences which are directed against life, limb, property or reputation of an individual." *And, see also* Judge Richard May and Marieke Wierda, *International Criminal Evidence* (New York: Transnational Publishers, 2002) para. 2.60 [May and Wierda, *International Criminal Evidence*].

[609] *Sesay* Decision on Form of Indictment, paras 9, 12; *Kanu* Decision on Form of Indictment, paras 18-21; *Kondewa* Decision on Form of Indictment, paras 9-10; *Norman* Service and Arraignment Decision, paras 28-29.

[610] *Sesay* Decision on Form of Indictment, para. 9; *Kanu* Decision on Form of Indictment, para. 20.

[611] *Kvocka et al.* Appeal Judgement, para. 30. *See also Norman* Service and Arraignment Decision, para. 28; *Kupreskic et al.* Appeal Judgment, paras 90, 92.

[612] *Kvocka et al.* Appeal Judgement, para. 30.

[613] *Kupreskic et al.* Appeal Judgement, para. 92.

[614] *Prosecutor v. Ndindabahizi*, ICTR-01-71-A, Judgement (AC), 16 January 2007, para. 19 [*Ndindabahizi* Appeal Judgement]; *Kvocka et al.* Appeal Judgement, para. 30.

must balance practical considerations relating to the nature of the evidence against the need to ensure that an Indictment is sufficiently specific to allow an accused to fully present his defence.[615]

1.4. Curing a Defective Indictment

332. Where an Indictment is impermissibly vague and lacking in specificity, the Appeals Chamber has directed that the Trial Chamber must inquire if the Prosecution has remedied the prejudice caused by "timely, clear and consistent information provided to the accused by the Prosecution."[616] Where such timely, clear and consistent notice is not provided, the prejudice caused to the accused by this defect still may be "deemed harmless if the Prosecution is able to show that the ability of the accused to prepare his defence was not materially impaired."[617]

333. In determining whether the Prosecution has cured a defective indictment, the Chamber, guided by the decision of the Appeals Chamber in the CDF Appeal, will consider whether the Accused received sufficient notice of the allegations in the Prosecution's Pre-Trial Brief, Supplemental Pre-Trial Brief and attached Witness Summaries, or Opening Statement.[618] The Chamber also will consider whether the Prosecution cured any defects in the Indictment by the information included in Prosecution motions to add witnesses to its witness list granted or in other communications by the Prosecution.[619] When determining whether the Prosecution

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[615] *Ndindabahizi* Appeal Judgement, para. 20. *See also Naletilic and Martinovic* Appeal Judgement, paras 24, 30 and 58, requiring different degrees of specificity depending on the mode of liability and the nature of the crime alleged; *Ntakirutimana* Appeal Judgement, paras 73-76 discussing the degree of specificity required where personal commission is alleged by the Prosecution; *Kvocka et al.* Appeal Judgement, para. 30; *Kupreskic et al.* Appeal Judgement, paras 89-92; *Ntagerura et al.* Appeal Judgement, para. 27; *Ntakirutimana* Appeal Judgement, paras 25-26, 78.

[616] *CDF* Appeal Judgement, para. 443; *AFRC* Appeal Judgement, para. 44.

[617] *CDF* Appeal Judgement, para. 443; *AFRC* Appeal Judgement, para. 45; *Gacumbitsi* Appeal Judgment, paras 175-179; *Kvocka et al.* Appeal Judgement, para. 43; *Ntakirutimana* Appeal Judgement, para. 78; *Kupreskic et al.* Appeal Judgement, paras 92, 114; *Ntagerura et al.* Appeal Judgement, para. 27; *Seromba* Appeal Judgement para. 100.

[618] *CDF* Appeal Judgement, para. 444. *See also Prosecutor v. Bikindi*, ICTR-01-72-T, Judgement (TC), 2 December 2008, paras 19-21; *Muhimana* Appeal Judgement, para. 82; *Gacumbitsi* Appeal Judgement, paras 57-58; *Naletilic and Martinovic* Appeal Judgement, para. 45; *Ntakirutimana* Appeal Judgement, para. 48.

[619] *Prosecutor v. Simba*, ICTR-01-76-A, Judgement (AC), 27 November 2007, para. 64 [*Simba* Appeal Judgement]; *Muhimana* Appeal Judgement, para. 82; *Gacumbitsi* Appeal Judgement, paras 57-58; *Naletilic and Martinovic* Appeal Judgement, para. 27; *Ntakirutimana* Appeal Judgement, para. 41; *Prosecutor v. Bagosora, Kabiligi, Ntabakuze, Nsengiyumva*, ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 35 [*Ntabakuze* Interlocutory Appeal Decision]. The Prosecution filed three motions to add witnesses:

has cured a defect in the Indictment the Chamber will take account of "the timing of the communications, the importance of the information to the ability of the accused to prepare his defence and the impact of the newly-disclosed material facts on the Prosecution's case."[620] In essence, the Chamber will consider and resolve these questions on a case-by-case basis. In that regard the Chamber notes that the trial proceedings did not run continuously during the presentation of the Prosecution case; rather, the trial proceeded in six to eight week sessions with a six to eight week break in between each session,[621] and the Defence case began eight months after the Prosecution closed its case.[622]

334. The Chamber finds no merit in the Defence submission that it ought to wholly disregard evidence where it diverges materially from a relevant witness statement.[623] Material differences between a prior statement and oral testimony go to the credibility and the weight to be attached to such evidence,[624] not to question of a defect in the Indictment.

335. The Sesay Defence raised objections to the form of the Indictment by way of a preliminary motion,[625] and continued to object during the course of the trial that he had no

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Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T, Prosecution Request for Leave to Call Additional Witnesses and Disclose an Additional Witness Statement, 12 July 2004, paras 8-9, 13 [First Prosecution Motion to Call Additional Witnesses], motion granted in *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request to Call Additional Witnesses (TC), 29 July 2004, see esp. para. 36 and the operative paragraph ordering a minimum five-month delay between the date of the Decision and the earliest date that any of the witnesses mentioned in the original Motion would be permitted to testify; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements Pursuant to Rules 66(A)(ii) and 73*bis*(E), 23 November 2004, paras 10-12 [Second Prosecution Motion to Call Additional Witnesses], motion granted in *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements, 11 February 2005, see esp. paras 30-33, 40-43, ordering a minimum three-month delay between the date of the decision and the earliest date that any of the witnesses mentioned in the original motion would be permitted to testify.

[620] *CDF* Appeal Judgement, para. 443; *Naletilic and Martinovic* Appeal Judgement, para. 27; *Kupreskic et al.* Appeal Judgement, paras 119-120; *Niyitegeka* Appeal Judgement, para. 197.

[621] This procedure was adopted in order to enable Trial Chamber I to hear the CDF and RUF cases concurrently. While the RUF case was in recess, the CDF proceedings were on-going.

[622] Both of these points are raised by the Prosecution in its Final Trial Brief at para. 104.

[623] See Kallon Final Trial Brief, paras 224-226.

[624] *See*, for example, *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Disclosure of Witness Statements and Cross-Examination (TC), 16 July 2004, paras 18-21, 25 [*Norman* Decision on Witness Statements and Cross-Examination]; *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95, 24 May 2005, para. 20; *Akayesu* Trial Judgement, para. 139.

[625] *Sesay* Decision on Form of Indictment.

notice of various facts, and that they had not been properly disclosed.[626] The Kallon Defence and Gbao Defence did not raise any objections to the form of the Indictment by way of a preliminary motion.[627] During trial, the Kallon Defence objected to the evidence of certain witnesses[628] and also raised certain objections relating to the Indictment in its Rule 98 submissions at the close of the Prosecution case.[629] The Kallon Defence objected to the form of the Indictment for the first time just before the beginning of his Defence case,[630] and then raised additional objections to the pleading of the Indictment in its Final Trial Brief.[631] The

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[626] The Sesay Defence objected that Count 8 was legally impermissible, duplicitous and/or redundant: Oral Decision on Rule 98 Motions, Transcript of 25 October 2006, p. 8.

[627] Kallon objected that he did not have an opportunity to enter a plea to the Consolidated Indictment: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Kallon - Decision on Motion for Quashing of Consolidated Indictment (TC), 21 April 2004 [*Kallon* Decision on Motion to Quash].

[628] Objection to the disclosure of certain information testified to by Witness TF1-015 found in Transcript of 27 January 2005, Melron Nicol-Wilson, pp. 141-143, upheld in *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Ruling on Disclosure Regarding Witness TF1-015 (TC), 28 January 2005; Objection to the Testimony of Witness TF1-045 in Transcript of 22 November 2005, p. 21-26; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Notice of Motion by Morris Kallon Pursuant to Rules 54 and 66(2) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone for an Order Directing the Prosecutor to Effect Reasonably Consistent Disclosures, 12 December 2005, overruled in *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Decision on Defence Motion for an Order Directing the Prosecution to Effect Reasonably Consistent Disclosure (TC), 18 May 2006. *See also* Kallon Final Trial Brief, para. 170. The Kallon Defence also objected to the addition of Prosecution witnesses TF1-359, TF1-360, TF1-361, TF1-363, TF1-314, TF1-362, TF1-366, TF1-367, and TF1-368. It is notable, however, that Counsel for Kallon objected on the basis that the Prosecution motion should have indicated whether witnesses would be added to the core or back-up lists, that their evidence was repetitive of the testimony of other Prosecution Witnesses already heard, and that the addition of these individuals as witnesses would cause prejudice to Accused because the witnesses may already have been contacted by the Defence to become Defence witnesses. These objections were overruled in our Decision on First Prosecution Motion to Call Additional Witnesses and Decision on Second Prosecution Motion to Call Additional Witnesses. We note also that Counsel for Kallon did not object to the addition of TF1-371 to the Witness list and explicitly declined to object to the admissibility of the supplemental statements of TF1-141 for late disclosure when asked by the Chamber whether he wished to do so: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Ruling on Oral Application for the Exclusion of Statements of Witness TF1-141 Dated Respectively 9th of October, 2004, 19th and 20th of October, 2004, and 10th January 2005 (TC), 3 February 2005, para. 10.

[629] Counsel for Kallon also argued that portions of the evidence of Witnesses TF1-371, TF1-360, TF1-263, TF1-141 were irrelevant because the Witnesses did not establish that the events occurred within the timeframe covered by the Indictment: Transcript of 16 October 2006, Charles Taku, pp. 20-21; Counsel also argued that the Indictment was defective for failing to plead whether attacks were widespread or systematic: Transcript of 16 October 2006, Charles Taku, pp. 38-39; Counsel submitted that Count 8 was redundant: Transcript of 25 October 2008, p. 8; Counsel also objected that the alleged burning of Koidu Town was not pleaded in the Indictment: Transcript of 16 October 2006, Charles Taku, pp. 49-50.

[630] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Motion on Challenges to the Form of the Indictment and for Reconsideration of Order Rejecting Filing and Imposing Sanctions, 7 February 2008; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Kallon Motion to Exclude Evidence Outside the Scope of the Indictment with Confidential Annex A, 14 March 2008 [Kallon Exclusion Motion]. This motion was made more than one and a half years after the Prosecution closed its case on 2 August 2006. An earlier motion by Kallon's Counsel was struck from the record in our Order Relating to Kallon Motion Challenging Defects in the Form of the Indictment and Annexes A, B and C (TC), 31 January 2008, p. 3.

[631] Objections to the pleading of the nature of the conflict: Kallon Final Trial Brief, paras 42-51; Objections to the pleading of Counts 7 and 9: Kallon Final Trial Brief, paras 147-148, 153, 155-156.

Gbao Defence sought leave to raise objections to the Prosecution's pleading of joint criminal enterprise during the trial,[632] and has argued in its Final Trial Brief that the Chamber should not consider allegations unrelated to 'forced marriage' under Count 8 of the Indictment.[633]

336. Generally, if defects in the form of Indictment are alleged and an accused objected in a timely manner at trial, the Prosecution has the burden of demonstrating that the Accused's ability to prepare his case has not been materially impaired. Where the Defence has raised no objections during the course of the trial, however, and raises the matter only in its closing brief, the burden shifts to the Defence to demonstrate that the Accused's ability to defend himself has been materially impaired,[634] unless it can give a reasonable explanation for its failure to raise the objection at trial.[635]

337. The Kallon Defence argued that the Chamber directed it to raise defects in the Indictment at the end of the case; therefore, it has raised the objections in a timely manner. This argument misconstrues the Chamber's position. The Chamber is of the view that preliminary motions pursuant to Rule 72(b)(ii) are the principal means by which the Defence should object to the form of the Indictment, and that the Defence should be limited in raising challenges to alleged defects in the Indictment at a later stage for tactical reasons.[636] Where the Defence objects to the admissibility of evidence on the basis that it falls outside the scope of the Indictment, the Defence is expected to make a specific objection at the time the evidence

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[632] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Gbao Request for Leave to Raise Objections to the Form of the Indictment, 23 August 2007 [Gbao Request for Leave on Form of Indictment]. *See also Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao Request for Leave to Raise Objections to the Form of the Indictment (TC), 17 January 2008 [Gbao Decision on Request to Raise Objections to the Form of the Indictment]. Although Counsel for Gbao did interpose objections to the admissibility of certain evidence for lack of notice during the Prosecution case, he has not argued that the Chamber should reconsider our decisions in relation to these witnesses in his Final Trial Brief.

[633] Gbao Final Trial Brief, paras 993-995.

[634] *Ntabakuze* Interlocutory Appeal Decision, paras 45-47. In several cases dealing with the situation where an accused has raised an objection to the form of the Indictment for the first time on Appeal, the Chamber has consider what form of an objection would suffice for the burden to remain with the Prosecution. In *Niyitegeka* Appeal Judgement, para. 199, the Appeals Chamber held that, unless the Defence had made specific objections at the time the evidence was introduced, the burden would shift to the Defence. In *Gacumbitsi* Appeal Judgement, para. 54, the Chamber held that any objection during the course of the trial, including during a 98*bis* application, would be sufficient; and in *Ntagerura et al.* Appeal Judgement, para. 138, the Chamber held that a general pre-trial objection to the form of the Indictment would suffice. *See also Simic* Appeal Judgement, 28 November 2006, para. 25.

[635] *Ntabakuze* Interlocutory Appeal Decision, para. 47.

sought to be introduced.[637]

338. Where the Defence has not objected at the pre-trial stage or at the time the impugned evidence was introduced, however, the Chamber considers that a belated objection raised at a later stage of the trial will not automatically lead to a shift in the burden of proof. In such a case, the Chamber will "consider relevant factors, such as whether the Defence provided a reasonable explanation for its failure to raise the objections at the trial."[638]

339. Guided by these fundamental tenets of law, the Chamber will now consider the challenges to the form of the Indictment.

2. Submissions of the Parties

340. Each of the three Accused, Sesay, Kallon and Gbao, have been charged pursuant to Article 6(1) of the Statute for having committed, planned, ordered, instigated and aided and abetted the crimes charged under all 18 Counts of the Indictment.[639] In respect of the allegation of commission, the Prosecution alleges that the Accused personally committed the crimes charged, and committed the crimes charged in Counts 1 to 14 through their membership in a joint criminal enterprise ("JCE").[640] In addition, the three Accused have been charged pursuant to Article 6(3) of the Statute with superior responsibility for the crimes specified in all Counts of the Indictment.[641]

341. In their Final Trial Briefs, the Sesay, Kallon and Gbao Defence raised challenges to the form of the Indictment. Counsel for each of the Accused argued that the defects in the Indictment that they identified ought to preclude the conviction of their clients with respect to certain acts, locations and modes of liability.

342. In its Final Trial Brief the Prosecution submitted that the Indictment, read as a whole, is adequate and meets the requirements set out by Article 17(4) of the Statute and Rule

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[636] *See AFRC* Appeal Judgement, paras 42, 100. See also *Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal (AC), 11 March 2005, para. 10.
[637] *AFRC* Appeal Judgement, para. 42.
[638] *Ntabakuze* Interlocutory Appeal Decision, para. 47.
[639] Indictment, paras 38, 40.
[640] Indictment, paras 38, 40.

47(c).[642] The Prosecution argued that, taking into account all of the circumstances of the RUF trial, the Indictment provides the Accused with sufficient notice of the material facts underlying the charges.[643]

3. Analysis

3.1. Challenges to the Sufficiency of the Prosecution's Pleading of the Alleged Joint Criminal Enterprise

3.1.1. Submissions of the Parties

343. In its Final Trial Brief, the Sesay Defence argued that the Chamber should not consider joint criminal enterprise as a mode of liability because the Prosecution failed to sufficiently plead and altered the nature or scope of the alleged joint criminal enterprise.[644] The Sesay Defence submitted that the purpose of the common plan, as originally pleaded, was "to terrorise and collectively punish the population by the commission of the enumerated crimes contained within the indictment in order to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas". Sesay's Counsel objected that this purpose was altered impermissibly in an August 2007 Notice from the Prosecution,[645] which identified a common design with a dual purpose: to "pillage the resources in Sierra Leone, particular diamonds [sic], and to control forcibly the population and territory of Sierra Leone".[646]

344. The Sesay Defence submitted that the Indictment provided Sesay with notice of the Prosecution allegation that he was individually responsible for crimes falling within a joint criminal enterprise (that is, Sesay had notice of the first category)[647] or which were committed

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[641] Indictment, paras 39-40.
[642] Prosecution Final Trial Brief, paras 93-95.
[643] Prosecution Final Trial Brief, paras 93-103.
[644] Sesay Final Trial Brief, paras 191-204.
[645] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Notice Concerning Joint Criminal Enterprise and Raising Defects in the Indictment, 3 August 2007 [Prosecution Notice Concerning JCE].
[646] Sesay Final Trial Brief, para. 203.
[647] The terms "form" and "category" are both used to describe the different types of joint criminal enterprise. The Prosecution has identified two "forms", the basic and the extended. As we have discussed above, the basic form of joint criminal enterprise encompasses the first two categories; that is, category one, where all co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention; and category two, a variant of the first, is characterised by the existence of an organised system of ill-treatment. The extended form of joint criminal

as a foreseeable consequence of the joint criminal enterprise (that is, he had notice of the extended category).[648] However, the Sesay Defence objected to the Prosecution's allegation in its Rule 98 Skeleton Response,[649] repeated in its final oral arguments,[650] that Sesay and the other Accused had also participated in the second category of joint criminal enterprise (the systemic or concentration camp category).[651] The Sesay Defence submitted that Sesay did not have adequate notice of the second category of joint criminal enterprise and the Chamber should not consider it.[652]

345. Finally, Counsel for Sesay objected that the Prosecution altered the Counts which it alleged were relevant to the different categories of joint criminal enterprise over the course of the trial. The Indictment alleged that all crimes under all Counts were committed within the joint criminal enterprise or, in the alternative, as a foreseeable consequence thereof. However, the Prosecution changed the allegation in the Prosecution Notice Concerning Joint Criminal Enterprise to allege that Counts 1 to 14 were within the joint criminal enterprise, or in the alternative, that Counts 1, 2, 12, 13, 14, were within the joint criminal enterprise and Counts 3 to 11 were foreseeable consequences of the crimes agreed upon in the joint criminal enterprise.[653]

346. The Kallon Defence also objected to the pleading of the joint criminal enterprise in its Final Trial Brief. Counsel for Kallon argued that joint criminal enterprise has been defectively pleaded as a mode of commission because the Indictment failed to set out clearly and precisely:[654]

(i) The identities of the participants in joint criminal enterprise;[655]

(ii) The alleged forms of joint criminal enterprise on which the Prosecution is relying in relation to each of the alleged offences "and to distinguish between

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enterprise is also referred to as a third category. For ease of reference, the Chamber will refer to the first, second and third categories of joint criminal enterprise.

[648] Sesay Final Trial Brief, para. 200.

[649] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Consolidated Prosecution Skeleton Response to the Rule 98 Motions by the Three Accused, 6 October 2006, para. 10 [Prosecution Rule 98 Skeleton Response].

[650] Transcript of 4 August 2008, Peter Harrison, p. 23.

[651] Sesay Final Trial Brief, paras 201-202, 204.

[652] Sesay Final Trial Brief, paras 201-202, 204.

[653] Sesay Final Trial Brief, paras 203-204.

[654] Kallon Final Trial Brief, 29 July 2008, para. 647.

[655] Kallon Final Trial Brief, paras 647, 650.

them";[656]

(iii) The role that Kallon is alleged to have played in the joint criminal enterprise;[657]

(iv) That Kallon shared with the other Accused the intent to enter into a common plan involving or amounting to the commission of crimes under the Statute, or that he had the requisite *mens rea* for participation in any category of joint criminal enterprise; and[658]

(v) The purpose and scope of the common plan, including the effective date of the agreement to the common plan.[659]

347. With respect to the scope of the common plan, the Kallon Defence submitted that the Indictment is defective because it fails to specify the date from which the agreement between the RUF and AFRC took effect.[660] In addition, the Kallon Defence argued that the Chamber should hold the Prosecution to a particularly exigent standard of specificity of pleading with respect to the joint criminal enterprise, given that the joint criminal enterprise in which Kallon is alleged to have participated was of a particularly large scope.[661] Finally, the Kallon Defence contended that the Indictment pleads only the first and third category of joint criminal enterprise and has confined its submissions to these two categories.[662]

348. Similarly, the Gbao Defence requested, in its Final Trial Brief, that the Chamber not consider joint criminal enterprise because the Prosecution impermissibly changed its theory of the common enterprise over the course of the trial, thereby rendering the trial unfair with respect to this mode of liability.[663] The arguments raised by the Gbao Defence in relation to the shifting nature of the Prosecution's theory were, for the most part, the same as those made by the Sesay Defence.[664] However, the Gbao Defence also submitted, in the alternative, that the Chamber ought to consider only the joint criminal enterprise as it was pleaded in the Indictment.[665]

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[656] Kallon Final Trial Brief, paras 647, 651-652.
[657] Kallon Final Trial Brief, paras 647, 653.
[658] Kallon Final Trial Brief, paras 647, 654.
[659] Kallon Final Trial Brief, paras 655-656.
[660] Kallon Final Trial Brief, para. 655.
[661] Kallon Final Trial Brief, para. 656.
[662] Kallon Final Trial Brief, paras 658-659.
[663] Gbao Final Trial Brief, paras 600-601, 606, 608.
[664] Gbao Final Trial Brief, paras 596-612.
[665] Gbao Final Trial Brief, paras 610-611.

349. The Gbao Defence characterises the common purpose of the joint criminal enterprise pleaded in the Indictment slightly differently than does the Sesay Defence, defining this purpose as "taking any actions necessary to gain political power and control over the territory of Sierra Leone, in particular the diamond mining areas".[666] Counsel for Gbao objected to the change in the Prosecution Notice Concerning Joint Criminal Enterprise,[667] arguing that it re-cast the purpose of the joint criminal enterprise as a plan to "carry out a campaign of terror and collective punishments in order to pillage the resources in Sierra Leone and to control forcibly the population and territory of Sierra Leone."[668] The Gbao Defence objected that in the Prosecution's Notice "terrorising and collectively punishing the population" became the central purpose of the joint criminal enterprise.[669] As a result of this change, Gbao argued that he did not have sufficient notice of the charges against him.[670]

350. In addition, as part of its argument that the Chamber should not consider the second category of joint criminal enterprise (the systemic category), the Gbao Defence contended that the Prosecution was inconsistent in the Counts that it identified as being within the basic or extended category of joint criminal enterprise at different points throughout the trial.[671]

351. The Prosecution, in its Final Trial Brief, submitted that members of the joint criminal enterprise committed the crimes charged under Counts 1 to 14 in all geographical areas pleaded in the Indictment, during the period from 25 May 1997 to January 2000.[672] The Prosecution stated that the common purpose of the enterprise is set out in paragraphs 36 to 38 of the Indictment.[673] Paragraph 36 of the Indictment specifies that the objective of the enterprise 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," which objective was to be achieved "by conduct constituting crimes within the Statute."[674] In its Final Trial Brief, the Prosecution argued that the basic and extended forms of joint criminal enterprise were

[666] Gbao Final Trial Brief, paras 598, 600.
[667] Prosecution Notice Concerning JCE.
[668] Gbao Final Trial Brief, para. 599.
[669] Gbao Final Trial Brief, para. 600.
[670] Gbao Final Trial Brief, para. 601.
[671] Gbao Final Trial Brief, paras 602-603, 605.
[672] Prosecution Final Trial Brief, para. 235.
[673] Prosecution Final Trial Brief, para. 240.
[674] Prosecution Final Trial Brief, para. 240, citing para. 36 of the Indictment.

properly pleaded in the alternative in the Indictment.[675] In a footnote, the Prosecution argued that the systemic category of joint criminal enterprise is, in fact, a variant of the basic category and, as such, does not need to be mentioned explicitly in the Indictment.[676] The Prosecution repeated this submission in its closing arguments before the Chamber.[677]

3.1.2. The Principles of Pleading Applicable to Joint Criminal Enterprise as a Mode of Liability

352. Consonant with the general principles relating to the degree of specificity required in an indictment, described above,[678] the Chamber is of the view that in order to give adequate notice to an accused of his alleged participation in a joint criminal enterprise, an indictment should include the following information:

(i) The identity of those engaged in the joint criminal enterprise, to the extent known and at least by reference to the group to which they belong;[679]

(ii) The time period during which the joint criminal enterprise is alleged to have existed;[680]

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[675] Prosecution Final Trial Brief, para. 241.
[676] Prosecution Final Trial Brief, para. 241, note 676.
[677] Transcript of 4 August 2008, Peter Harrison, p. 23.
[678] *Supra* paras 325-331.
[679] *Prosecutor v. Tolimir*, IT-05-88/2-PT, Decision on Preliminary Motions on the Indictment Pursuant to Rule 72 of the Rules (TC), 14 December 2007, para. 46 [*Tolimir* Decision on Form of Indictment]; *Prosecutor v. Simic, Tadic and Zaric*, IT-95-9-T, Judgement (TC), 17 October 2003, para. 145 [*Simic* Trial Judgement]; *Prosecutor v. Pavkovic, Lazarevic, Djordjevic and Lukic*, IT-03-70-PT, Decision on Sreten Lukic's Preliminary Motion on Form of Indictment (TC), 8 July 2005, p. 6 [*Lukic* Decision on Form of Indictment]. See also *Justice* Case, p. 17, Indictment paras 1 and 5, alleging that between January 1933 and April 1945, as part of the common design, the defendants worked with "the Gestapo, SS, SD, SIPO and RSHA for criminal purposes". In its Judgement of 3-4 December 1948, at pp. 984-985, the Tribunal specifically considered and approved of the degree of specificity with which the Indictment was pleaded. See also the *Trial of Martin Gottfried Weiss and Thirty-Nine Others* ("The Dachau Concentration Camp Trial"), General Military Government Court of the United States Zone, Dachau, Germany, 15 November – 13 December 1945, XI UNWCC 5, p. 7: The Accused were charged with acting "in pursuance of a common design" as members of Dachau Concentration Camp and its subsidiary camps. Certain of the Accused objected to the formulation of the charge, arguing that the Indictment charged only crimes "including those violations of enemy nationals or persons acting with them of the laws and usages of war, or general application and acceptance", but that the Accused were not specifically identified as 'enemy nationals' in the charge. The General Military Government Court of the United States Zone rejected the objection and held that "[t]he definition quoted by the defence does not purport to be exhaustive, as is shown by the word 'including' and the words 'or persons acting with them' leaving room for the argument that any neutral or allied nationals who by their conduct had identified themselves with the German staff and their way of running the camp could be tried with them."
[680] *Simic* Appeal Judgement, para. 22; *Tolimir* Decision on Form of Indictment, para. 46; *Prosecutor v. Simba*, ICTR-01-76-I, Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment (TC), 6 May 2004, para. 63 [*Simba* Decision on Form of Indictment].

(iii) The nature or purpose of the joint criminal enterprise;[681]

(iv) The category of joint criminal enterprise in which the accused is alleged to have participated;[682] and

(v) The role that the Accused is alleged to have played within the joint criminal enterprise.[683]

3.1.3. The Divisibility of a Joint Criminal Enterprise

353. The Chamber considers that the identities of all participants and the continuing existence of the joint criminal enterprise over the entire time period alleged in the Indictment are not elements of the *actus reus* of the joint criminal enterprise that need to be proven beyond reasonable doubt by the Prosecution; therefore, they are not material facts upon which a conviction of the Accused would rest.[684]

354. The Prosecution must demonstrate, however, that the joint criminal enterprise involved the participation of a plurality of persons.[685] By parity of reasoning, the Chamber holds that the Prosecution must prove that the joint enterprise existed over some period during the timeframe charged in the Indictment, but not that it existed over the entire timeframe

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[681] *Simic* Appeal Judgement, para. 22; *Tolimir* Decision on Form of Indictment, para. 46; *Prosecutor v. Milutinovic, Sainovic, Ojdanic, Pavkovic, Lazarevic, Djordjevic and Lukic*, IT-05-87-PT, Decision on Nebojsa Pavkovic's Preliminary Motion on Form of Indictment (TC), 22 July 2005, p. 3 [*Pavkovic* Decision on Form of Indictment]; *Simba* Decision on Form of Indictment, para. 63.

[682] *Simic* Appeal Judgement, para. 22; *Kvocka et al.* Appeal Judgement, paras 42-44; *Krnojelac* Appeal Judgement, para. 115; *Lukic* Decision on Form of Indictment, p. 4; *Simba* Decision on Form of Indictment, para. 77.

[683] *Simic* Appeal Judgement, para. 22; *Tolimir* Decision on Form of Indictment, para. 46.

[684] *Krajisnik* Trial Judgement, paras 1086-1087; *Simba* Decision on Form of Indictment, paras 69-73; *Kordic and Cerkez* Appeal Judgement, paras 144, 147. See also *Prosecutor v. Ntabakuze and Kabiligi*, ICTR-96-34-I, Decision on the Defence Motions Objecting to a Lack of Jurisdiction and Seeking to Declare the Indictment Void *ab initio* (TC), 13 April 2000, para. 33 [*Ntabakuze and Kabiligi* Motions to Void the Indictment], holding that the Prosecution may plead in the Indictment information relating to the Prosecution's "entire theory of a case that paint a more full picture of the events [...] including inter alia providing context, [and] showing relationships".

[685] *AFRC* Appeal Judgement, para. 75, citing *Tadic* Appeal Judgement, para. 227. The Chamber's complete discussion of the elements of joint criminal enterprise may be found *supra* paras 251-266. *See also Tadic* Appeal Judgement, para. 190: The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") recognized joint criminal enterprise as a mode of personal commission, reasoning that "[w]hoever contributes to the commission of crimes by the group of persons or some members of the group, in execution of a common criminal purpose, may be held to be criminally liable". In determining that a joint criminal enterprise must involve a plurality of persons, at para. 227, the ICTY Appeals Chamber relied explicitly on the decision of the British Military Court in the *Trial of Erich Heyer and six others* ("Essen Lynching Case"), British Military Court for the Trial of War Criminals, Essen, 18th-19th and 21st-22nd December, 1945, I UNWCC 88. In that case, Heyer, a Captain in the German Army, publicly ordered the private escorting three Allied prisoners of War from one location to another not to interfere should civilians molest the prisoners en route. The prisoners were attacked by a mob and killed. Heyer, the private and three civilians were found guilty as being "concerned in" the killing. Two of the civilians allegedly involved in the attack against the British airmen were acquitted.

charged. Similarly, it is the Chamber's considered opinion that because the common objective of a joint criminal enterprise may be fluid as to its criminal means, the Indictment will be sufficient if that objective encompasses, or is to be accomplished by means of, at least one, but not all, of the crimes specified as being within the applicable category of joint criminal enterprise, or as being a foreseeable consequence of the enterprise.[686] In the Chamber's considered opinion, then, a joint criminal enterprise is divisible as to participants, time and location. It is also divisible as to the crimes charged as being within or the foreseeable consequence of the purpose of the joint enterprise.

3.1.4. The Pleading of the Joint Criminal Enterprise in the Indictment

355. In its Judgement in the AFRC case, the Appeals Chamber upheld this Chamber's findings in relation to the pleading of the joint criminal enterprise in our pre-trial form of Indictment decisions.[687]

356. The arguments of the Sesay and Gbao Defence, however, principally contend that the Prosecution has altered its theory of the joint criminal enterprise over the course of the trial. The Chamber, therefore, will consider whether the Accused have received adequate and sufficiently clear notice of the Prosecution's theory of joint criminal enterprise over the entirety of the proceedings.

357. The Chamber is of the view that insofar as it is argued that the Prosecution altered its theory of joint criminal enterprise over the course of proceedings, the Kallon Defence could not have been expected to have raised an objection at an earlier point during the proceedings.[688] Therefore, we will consider the merit of the objections of the Kallon Defence in this context, with the burden remaining, at all times, on the Prosecution to demonstrate that Kallon's defence was not materially prejudiced by any of its alleged alterations. Consequently, the Chamber will determine whether, taking into account all communications received over the course of the trial, the three Accused received clear, timely and consistent notice of the

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[686] *Krajisnik* Trial Judgement, paras 1096-1098, 1118.
[687] *AFRC* Appeal Judgement, paras 81-86.
[688] See Prosecution Notice Concerning JCE, paras 5-11. *See also* Gbao Decision on Request to Raise Objections to the Form of the Indictment, p. 2. *See further AFRC* Appeal Judgement, paras 100, 114-115, confirming the Chamber's holdings in *Sesay* Decision on Form of Indictment, paras 18, 26-27 and *Kanu*, Decision on Form of Indictment, paras 12, 13, 15. *See also Ntabakuze* Interlocutory Appeal Decision, paras 45-46.

timeframe, the participants, the purpose, the category of the joint criminal enterprise and the Counts falling within each category, as well as of the role that Kallon is alleged to have played in the common plan.

3.1.4.1. The timeframe over which the joint criminal enterprise is alleged to have existed

358. The Kallon Defence has argued that the Indictment is defective because it does not specify the effective date of the agreement upon which the joint criminal enterprise was based took effect. The precise date of any agreement does not need to be proven in order to establish the liability of an accused under a theory of joint criminal enterprise; therefore, it is not a fact on which the conviction of an accused depends.[689] Moreover, the Chamber recalls that the common plan may arise extemporaneously.[690] Thus, while an accused must have notice of the timeframe over which the joint criminal enterprise is alleged to have existed in order to prepare his defence, the Chamber opines that the date of any initial agreement is not a material fact which must be pleaded in the Indictment. Therefore, the Chamber finds that the Indictment is not defective in this respect.

359. Nevertheless, in the context of the objections by the Sesay and Gbao Defence that the Prosecution's theory changed over the course of the trial to such an extent that the Defence teams were unable to know the case they had to meet, the Chamber will consider whether the Accused received sufficient, clear and consistent notice, over the course of proceedings, of the timeframe during which the joint criminal enterprise allegedly existed.

360. During the trial, the Prosecution alleged that the joint criminal enterprise spanned the entire Indictment period.[691] The Appeals Chamber held in the AFRC case that an identical formulation of the timeframe over which the joint criminal enterprise operated in the AFRC

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[689] *See*, for example, *Kordic and Cerkez* Appeal Judgement, paras 144, 147; *Blagojevic and Jokic* Trial Judgment, para. 699.

[690] *Supra* para. 258.

[691] Indictment, para. 35. *See also* Transcript of 5 July 2004, David Crane, pp 20-23; Supplemental Pre-Trial Brief, para. 7; Prosecution Skeleton Response to Rule 98 Motion, para. 18; Prosecution Notice Concerning JCE, paras 7, 8. It is noteworthy, however, that this Notice specifies that "Johnny Paul Koroma, Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu, SAJ Musa and other Commanders and leaders of the AFRC" became part of the joint criminal enterprise "about" the 28th of May 1997. The Opening Statement makes allegations concerning a plan beginning in 1991 at pp. 20-22, the leaders of the plan after 1996 at pp. 21-23, and the inclusion of the AFRC after 25 May 1997 at p. 23 and lasting until the end of the conflict, at p. 23.

Indictment was pleaded with sufficient specificity.[692] In its Final Trial Brief, however, the Prosecution changed the time at which it alleged the Accused began acting jointly with others to further their common design, arguing that the joint criminal enterprise spanned only the period from 25 May 1997 to January 2000;[693] that is, exactly the same timeframe held by the Appeals Chamber to have been alleged in the AFRC Indictment.[694] The Chamber will consider whether this alteration was permissible and whether it prejudiced the Accused.

361. In this regard, the Chamber does not regard the Prosecution's submission in its Final Trial Brief to amount to an attempt to unilaterally amend the pleading of the Indictment without moving for an amendment. On the contrary, the Chamber understands this narrowing of the timeframe to be a submission regarding the sufficiency of the evidence adduced at trial. Specifically, we consider that the Prosecution has conceded that the evidence does not establish the existence of a joint criminal enterprise before 25 May 1997 or after the end of January 2000. It is the considered view of the Chamber that as the Indictment is divisible as to time, and this restricted period is within the original timeframe pleaded in the Indictment, the Prosecution's concession has not in any way prejudiced the ability of the Accused to prepare their defence. The Chamber, therefore, will consider whether the Prosecution have proven the existence of a joint criminal enterprise spanning the period between 25 May 1997 and the end of January 2000.

3.1.4.2. The participants in the joint criminal enterprise

362. Having regard to the previous analysis in paragraph 353, the Chamber is of the opinion

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[692] The Appeals Chamber, at para. 85 of its judgement in the AFRC case, held that the time period in the Indictment over which the JCE was alleged to have operated was that covered by all of the alleged crimes in the Indictment. The Appeals Chamber based this finding on the wording of paragraph 32 of the AFRC Indictment, read in conjunction with paragraphs 34-36. Paragraph 32 of the AFRC Indictment states:

> "At all times relevant to this Indictment, ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, through their association with the RUF, acted in concert with CHARLES GHANKAY TAYLOR aka CHARLES MACARTHUR DAPKPANA TAYLOR."

The pleading of the JCE in the RUF Indictment at paragraph 35 is virtually identical, reading:

> "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."

Paragraph 35 of the RUF Indictment, therefore, specifies the timeframe of the JCE as "[a]t all times relevant to this Indictment.

[693] Prosecution Final Trial Brief, para. 235.

[694] *AFRC* Appeal Judgement, para. 85.

that the identity of each of the participants in the joint criminal enterprise is not a material fact which must be pleaded in the Indictment; nevertheless, in order to prepare their defence, the Accused are entitled to notice of the identities of the alleged members of the common plan, at least by reference to their category or group. The Kallon Defence objected to the sufficiency of the Indictment in this respect.

363. Paragraphs 34 to 36 of the Indictment allege that the following individuals acted in concert in pursuance of a common plan: Sesay, Kallon, Gbao, Johnny Paul Koroma, Foday Sankoh, Sam Bockarie, Alex Tamba Brima (aka Gullit), Brima Bazzy Kamara (aka Bazzy), Santigie Borbor Kanu (aka Five-Five), Charles Taylor and/or other superiors in the RUF, Junta and AFRC/RUF forces.[695]

364. The Prosecution Notice Concerning Joint Criminal Enterprise, on the other hand, gave specific date ranges for the participation of these individuals and groups, and named two additional participants, Dennis Mingo and SAJ Musa.[696] In addition, the Prosecution Notice alleges that "[m]embers of the RUF, AFRC and others either participated in the joint criminal enterprise or were used by the leaders of the organised armed groups and forces to implement and achieve the objectives of the joint criminal enterprise."[697]

365. The Kallon Defence argued that paragraphs 34 and 35 of the Indictment are irrelevant to determining the identities of the alleged participants in the common plan because the phrase "acted in concert with others" does not sufficiently plead a joint criminal enterprise.[698] Therefore, the Kallon Defence suggested that the Chamber could consider only paragraph 36. It also contended that, as all members of the RUF and AFRC could not possibly have been members of the alleged joint criminal enterprise, and as paragraph 36 of the Indictment failed to specify the particular members of the RUF and AFRC who were participants,[699] Counsel for Kallon concluded that the only members of the common design sufficiently identified in the Indictment are the six persons specifically named. Therefore, the Kallon Defence submitted that the only joint criminal enterprise properly pleaded as to the identity of the participants, if

[695] Indictment, paras 34-36.
[696] Prosecution Notice Concerning JCE, para. 9.
[697] Prosecution Notice Concerning JCE, para. 10.
[698] Kallon Final Trial Brief, para. 650.
[699] Kallon Final Trial Brief, para. 650.

any, includes Sesay, Kallon, Gbao, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu.

366. With regard to paragraph 35 of the Indictment, the Chamber notes that the Appeals Chamber in the AFRC Appeal Judgement opined that paragraph 32 of the AFRC Indictment,[700] which is nearly identical to paragraph 35 of the RUF Indictment, was relevant to determining whether the joint criminal enterprise had been pleaded with the requisite specificity in that case.[701] Accordingly, the Chamber rejects the Kallon Defence argument that paragraph 35 is irrelevant to the present inquiry and finds that the Indictment.

367. The Chamber considers that the Accused had sufficient notice of the identities of the alleged participants in the joint criminal enterprise, even where these participants were not named individually. Given the polymorphous nature of the RUF command structure, the fluidity of the boundaries between different groups within the RUF itself, and between the RUF and AFRC forces during much of the Junta period, the Chamber finds that any further detail as to the membership of the joint criminal enterprise is a matter of evidence;[702] and therefore, is not required to have been pleaded in the Indictment itself.[703]

368. The Chamber finds, however, that the joint criminal enterprise pleaded by the Prosecution requires the joint action of the RUF and AFRC;[704] therefore, despite the divisibility of the joint criminal enterprise, we will not consider whether the evidence demonstrates the existence of a second, independent joint criminal enterprise involving only members of the RUF.

369. Finally, the Chamber concludes that the Prosecution Notice Concerning Joint Criminal Enterprise did not create ambiguity with respect to the identity of the participants in the common purpose which prejudiced the ability of the Accused to answer the case against

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[700] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Further Amended Consolidated Indictment, 18 February 2005 [AFRC Indictment].
[701] AFRC Appeal Judgement, para. 85, note 147.
[702] *See also* on this point the *Sesay* Decision on Form of Indictment, para. 18.
[703] *Sesay* Decision on Form of Indictment, para. 6; *Kanu* Decision on Form of Indictment, paras 6 and 10; *Kamara* Decision on Form of Indictment, para. 33; *Kvocka et al.* Decision on Form of Indictment, para. 14, cited with approval in the AFRC Appeal Judgement at para. 37; *Simba* Appeal Judgement, paras 70-72.
[704] *See* Indictment, paras 34-36 and Prosecution Final Trial Brief, paras 235 and 249. This conclusion is reinforced by the Prosecution's decision in its Final Trial Brief to alter the date on which it alleged the joint criminal enterprise began to reflect the date of the AFRC Coup.

them. The Chamber finds that the addition of the names of SAJ Musa and Dennis Mingo to the list of named participants in the Prosecution Notice Concerning Joint Criminal Enterprise simply added additional specificity to paragraph 34 of the Indictment by naming two other superiors in the RUF or AFRC whose activities had been notified to the Defence prior to the commencement of the trial.[705] It is, therefore, the view of the Chamber that the Accused were on notice throughout the trial that the Prosecution alleged that all of the individuals in that Notice, as well as other members of the AFRC and RUF, were participants in the joint criminal enterprise between 25 May 1997 and the end of January 2000.

3.1.4.3. The nature or purpose of the joint criminal enterprise

370. The purpose of a joint criminal enterprise is a material fact which must be pleaded in the Indictment.[706] The gravamen of the Sesay and Gbao Defence objections to the Prosecution's pleading of joint criminal enterprise is not that the Indictment itself is defective; rather, they argued that the Prosecution's allegations with respect to the purpose of the common enterprise, the category of joint criminal enterprise, and the Counts which allegedly fell within or which were a foreseeable consequence of the joint criminal enterprise, shifted and changed over the course of the trial. The Chamber will consider this objection first as it relates to the allegedly shifting nature or purpose of the common design.

371. Paragraphs 36 to 38 of the Indictment set out the common purpose of the joint criminal enterprise.[707]

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[705] *Stakic* Appeal Judgement, para. 70. *See*, for example, regarding disclosure of the role of Superman: Prosecution Supplemental Pre-Trial Brief, paras 54, 78, 126-127, 409-410, 690 and annexed Witness Table, pp. 12 (TF1-093), 15 (TF1-176), 44 (TF1-263), 47 (TF1-017), 59 (TF1-083), 63 (TF1-177), 64 (TF1-212), 67 (TF1-213), 68 (TF1-311), 70 (TF1-215), 71 (TF1-146), 72 (TF1-257), 80 (TF1-261), 81 (TF1-252) (TF1-344) (TF1-259), 82 (TF1-345) (TF1-255), 84 (TF1-180), 85 (317), 87 (TF1-110), 88 (TF1--057) (223); 89 (TF1-251), 94-95 (TF1-131), 98 (TF1-168), 102 (276); Witness Statement of George Johnson, 6 May 2003; Witness Statement of TF1-071 of 17 November 2002, pp. 60-63. See, for example, regarding the disclosure of the role of SAJ Musa: Witness Table annexed to Prosecution Supplemental Pre-Trial Brief, pp. 13, (TF1-094), 15 (TF1-176), 19 (TF1-281), 55 (TF1-048), 56 (TF1-057), 59 (TF1-083), 64 (TF1-134), 70-71 (TF1-215) (TF1-094), 72 (TF1-133) (TF1-138), 88 (TF1-057), 90 (TF1-140), 93 (TF1-020), 94 (TF1-131), 103 (TF1-275), 104 (TF1-138), 107 (TF1-182) and Witness Statement of George Johnson, 6 May 2003.

[706] *AFRC* Appeal Judgement, paras 78, 81-84; *Stakic* Appeal Judgement, para. 118; *Kvocka et al.* Appeal Judgement, para. 42.

[707] See the *AFRC* Appeal Judgement, paras 81-84, articulating the Appeals Chamber's interpretation of the AFRC Indictment, in which the joint criminal enterprise is pleaded in near identical terms in paras 36-38: "Although the objective of gaining and exercising political power and control over the territory of Sierra Leone may not be a crime under the Statute, the actions contemplated as a means to achieve that objective are crimes within the Statute."

372. The Prosecution Supplemental Pre-Trial Brief,[708] Opening Statement,[709] and Rule 98 Skeleton Response[710] all articulate the purpose of the joint criminal enterprise as a plan to take control of the Republic of Sierra Leone, and particularly the diamond mining activities, by any means, including unlawful means. These unlawful means are detailed in paragraph 37 of the Indictment. The Prosecution Final Trial Brief took a similar position.[711]

373. However, following the AFRC Trial Judgement,[712] the Prosecution in August 2007 filed its Notice Concerning Joint Criminal Enterprise in August 2007 that specified a two-fold purpose of the common plan: (1) to conduct a campaign of terror and collective punishments in order to pillage the resources of Sierra Leone, particularly diamonds, and (2) to control forcibly the population.[713] In its final oral arguments, the Prosecution rejected the contention that this Notice impermissibly altered the pleaded purpose of the joint criminal enterprise.[714]

374. The Chamber finds that the formulation of the common purpose in the Prosecution Notice Concerning Joint Criminal Enterprise differs from that originally pleaded in the Indictment, and from the purpose articulated in the Prosecution's Final Trial Brief. The Prosecution Notice Concerning Joint Criminal Enterprise made the conduct of a campaign of terror and collective punishment one of the explicit purposes of the joint criminal enterprise, rather than the means by which the objective of gaining control of Sierra Leone was to be achieved. The Chamber considers that the Prosecution may not unilaterally attempt to alter a material fact in the Indictment more than half-way through a trial. The right procedure under the Rules is to seek an amendment of the Indictment. Thus, the Chamber finds that it will not consider whether the Accused were participants in a joint criminal enterprise with the purpose as alleged in the Prosecution Notice Concerning Joint Criminal Enterprise.

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[708] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Prosecution Supplemental Pre-Trial Brief Pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 30 March 2004 as Amended by Order to Extend the Time for Filing of the Prosecution Supplemental Pre-Trial Brief of 2 April 2004, 21 April 2004, para. 8 [Prosecution Supplemental Pre-Trial Brief].

[709] Transcript of 5 July 2004, Mr. David Crane, pp. 20-21, 25.

[710] Prosecution Rule 98 Skeleton Response, para. 18; Transcript of 16 October 2006, Peter Harrison, p. 92.

[711] Prosecution Final Trial Brief, para. 240.

[712] AFRC Trial Judgement, paras 66-76. The AFRC trial judgement held that the joint criminal enterprise had been defectively pleaded in the Indictment because the specified purpose of the enterprise was not inherently criminal. This finding was overturned on appeal: AFRC Appeal Judgement, paras 80-84.

[713] Prosecution Notice Concerning JCE, para. 6.

[714] Transcript of 4 August 2008, Peter Harrison, p. 25.

375. The Chamber, however, finds that the Indictment adequately put the Accused on notice that the purpose of the alleged joint criminal enterprise was to take control of Sierra Leone through criminal means, including through a campaign of terror and collective punishments.[715] Throughout the trial, the Accused were on notice that they were alleged to have committed the crimes of collective punishment and acts of terrorism through their participation in a joint criminal enterprise. They were also notified of the fact that one of the alleged goals of their armed struggle was to gain control of Sierra Leone, and in particular, of the diamond mining areas. The Chamber does not consider that the ability of the Accused to present their defence was materially prejudiced by the alteration to the purpose of the common plan as alleged in the Prosecution Notice Concerning Joint Criminal Enterprise. The Chamber therefore dismisses this objection in its entirety.

376. For the foregoing reasons, the Chamber will consider only whether the Prosecution have proven the alleged purpose of the joint criminal enterprise as pleaded in the original Indictment; that is, whether the parties to the common enterprise shared a common plan and design to gain territorial control and political power by conduct constituting crimes within the Statute.[716]

3.1.4.4. The form or category of the joint criminal enterprise

377. All three Accused argued that the Prosecution did not plead adequately the category of joint criminal enterprise in which it alleges the Accused participated. Specifically, the Defence for all Accused argued that they did not have adequate notice that the Prosecution alleged that Sesay, Kallon and Gbao were criminally responsible for the crimes in the Indictment on the basis of their membership in a common enterprise amounting to a system of repression (joint criminal enterprise category 2). The Defence acknowledged in their Final Trial Briefs that the Indictment adequately pleaded the first and third categories of joint criminal enterprise.[717]

378. With respect to the category of joint criminal enterprise alleged by the Prosecution, the Indictment itself is ambiguous, stating only that the crimes were either within the joint

[715] *AFRC* Appeal Judgement, paras 82-84; *Sesay* Decision on Form of Indictment, para. 27.
[716] *AFRC* Appeal Judgement, para. 82 and 83.
[717] Sesay Final Trial Brief, para. 200; Kallon Final Trial Brief, paras 658-659; Gbao Final Trial Brief, para. 602.

criminal enterprise or were a foreseeable consequence thereof,[718] suggesting only the first and third categories of joint criminal enterprise. The same formulation is repeated in the Prosecution's Opening Statement.[719]

379. The Prosecution Pre-Trial Brief differentiates between the *mens rea* requirements for all three categories of joint criminal enterprise, without relating the mental elements of this mode of liability to any factual allegations.[720] The Pre-Trial Brief describes the first category of joint criminal enterprise as encompassing "cases where each enterprise member voluntarily participates in one aspect of the common design and intends the resulting crimes."[721] The second category, in the Prosecution's submission, applied to "cases where there exists an organised 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."[722] The Pre-Trial Brief does not argue that the second category of joint criminal enterprise is subsumed within the first.[723]

380. In the Supplemental Pre-Trial Brief, the Prosecution articulated its theory in a manner which the Chamber considers to resemble most closely a pleading of only the first and third categories of joint criminal enterprise. The Prosecution stated that each crime charged in the Indictment "resulted from the participation of ... [the Accused] ... in the common plan"[724] or was "a foreseeable risk of the common plan".[725] There is no mention of any system of forced labour or system of enslavement of civilians. The position on the categories of joint criminal enterprise pleaded in the Prosecution's Skeleton Response to the Accused's Rule 98 Motions is contradictory,[726] but the Response did state explicitly that forced mining and forced farming

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[718] Indictment, para. 37.
[719] Transcript of 5 July 2004, David Crane, p. 25.
[720] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73*bis*) of 13 February 2004, 1 March 2004, para. 209 [Prosecution Pre-Trial Brief].
[721] Prosecution Pre-Trial Brief, para. 210(a).
[722] Prosecution Pre-Trial Brief, para. 210(b).
[723] Prosecution Pre-Trial Brief, paras 209-210.
[724] Prosecution Supplemental Pre-Trial Brief, paras 21-22, 86-87, 135-136, 192-193, 249-250, 289-290 (Sesay); paras 304-305, 369-370, 418-419, 466-467, 475-476, 532-533, 572-573 (Kallon); 587-588, 650-651, 699-700, 747-748, 756-757, 813-814, 853-854 (Gbao).
[725] Prosecution Supplemental Pre-Trial Brief, paras 23, 88, 137, 194, 251, 291 (Sesay); 305, 371, 420, 468, 477, 534, 574 (Kallon); 589, 652, 701, 749, 758, 815, 855 (Gbao).
[726] Prosecution Rule 98 Skeleton Response, paras 10, 18. Paragraph 10 reads:

were examples of the second category of joint criminal enterprise.[727] The Prosecution's oral submissions in the Rule 98 hearing were ambiguous on this point.[728]

381. The Chamber is of the view that the pleading in the Prosecution Notice Concerning Joint Criminal Enterprise, filed roughly 11 months after the Rule 98 Skeleton Response, is problematic. The Notice stated that "[t]he crimes charged in Counts 1 to 14 were within the joint criminal enterprise. The Accused and other participants intended the commission of the charged crimes."[729] This formulation is consistent with an allegation that the Accused are criminally responsible based on their participation in the first category of joint criminal enterprise. The Notice alleged that certain Counts were, alternatively, "a foreseeable consequence of" the joint criminal enterprise,[730] which is consistent with an allegation that the Accused are criminally responsible based on their participation in the third category of joint criminal enterprise. The Chamber considers it significant that the Notice did not mention a system of forced labour or enslavement.

382. The Prosecution, however, argued in its Final Trial Brief, that the Indictment pleads the basic form of joint criminal enterprise, which encompasses both the first and second categories.[731] In its final oral submissions, the Prosecution also argued that the Indictment

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> Contrary to a defence assertion the Indictment pleads all three categories of JCE. [sic] The Indictment states that the alleged crimes: "including unlawful killings, abductions (..) were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise'". The Accused are specifically alleged to have acted pursuant to a basic (within) or alternatively extended (foreseeable) joint criminal enterprise with respect to the acts charged. [*citations omitted*]

However, paragraph 18 alleges that the Accused

> were senior Commanders who participated in all three forms of JCE. They knew of the use of forced labour, sexual violence, pillaging and of the use of child soldiers since 30 November 1996, and that the JCE "to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, included these and other criminal acts in furtherance of the purpose of the JCE. For example, the execution of 60 persons, investigated and detained by Gbao, in Kailahun town" is an example of the first form of JCE, as are the acts of Operation Pay Yourself, to which Sesay and Kallon were participants. Alternatively, if they do not fall within the first form of JCE, they are examples of crimes which were the foreseeable consequence of the JCE, and fall within the third form of JCE. Forced mining and forced farming, forms of enslavement, are examples of the second form of JCE.

[727] Prosecution Rule 98 Skeleton Response, para. 18.
[728] Transcript of 16 October 2006, Peter Harrison, p. 101.
[729] Prosecution Notice Concerning JCE, para. 7.
[730] Prosecution Notice Concerning JCE, para. 7.
[731] Prosecution Final Trial Brief, para. 241, note 675. *See* generally paras 240-242 and paras 407-411 on joint criminal enterprise.

properly pleaded all three categories of joint criminal enterprise, with the second category being alleged as a sub-set of the first.[732]

383. While some consider the second category of joint criminal enterprise to be a variant of the first category,[733] it is a variant in which the mental intent element differs. The accused "must have had personal knowledge of the system in question (whether proven by express testimony or a matter of reasonable inference from the accused's position of authority) and the intent to further the concerted system."[734] The Chamber considers that the Prosecution is required to set out its theory of liability clearly at a point in time which is early enough "to enable the accused to know what exactly he is accused of and to enable him to prepare his defence accordingly".[735] Where the second category of joint criminal enterprise is alleged, therefore, the Chamber holds that the Prosecution must clearly identify the Counts which it considers to have been committed in furtherance of the common purpose shared by all participants in the system.[736]

384. The Chamber considers that at no point before the close of the Prosecution's case did the Prosecution clearly articulate its theory of a systemic joint criminal enterprise. Only in its Rule 98 Skeleton Response did the Prosecution state explicitly that it was relying on the second category of joint criminal enterprise in relation to Count 13, enslavement, and this pleading was far from a model of clarity. The Chamber finds it significant that the systemic category of joint criminal enterprise is not alleged in the subsequent Prosecution Notice Concerning Joint Criminal Enterprise. Thus, on the facts of this case, the Chamber opines that such notice of the second category of joint criminal enterprise as may have been given to the Accused by the Prosecution was not sufficient, clear, consistent or timely.

385. We are of the view that because the objections of the Accused relate to the changes in the Prosecution's theory over the course of the trial, the Accused objected on this point in a

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[732] Transcript of 4 August 2008, Peter Harrison, pp. 23-24.
[733] See, for example, *Ntakirutimana* Appeal Judgement, para. 464. *Krnojelac*, Appeal Judgement, para. 89. *See also Kanu* Decision on Form of Indictment, para. 14.
[734] *Krnojelac*, Appeal Judgement, para. 89.
[735] *Krnojelac*, Appeal Judgement, para. 115
[736] *Krnojelac* Appeal Judgement, para. 117.

timely manner.[737] Therefore, the burden lies on the Prosecution to demonstrate that the ability of the Accused to prepare their defence was not materially prejudiced by the late and imprecise notice of its allegation that the Accused participated in a common design amounting to a system of repression.[738] The Chamber finds that the Prosecution has not discharged this burden, and finds that it would be unfair to the Accused to consider their liability pursuant to the second category of joint criminal enterprise.[739]

3.1.4.5. Pleading of the Counts relevant to the first and third categories of joint criminal enterprise

386. The Sesay and Gbao Defence have argued that the Prosecution has changed, impermissibly, the Counts alleged to have been either within, or the foreseeable consequence of the joint criminal enterprise. The Accused submitted that these changes have prejudiced their ability to prepare their defence, and that therefore, the Chamber should not consider joint criminal enterprise as a mode of liability.

387. The Indictment,[740] the Prosecution Supplemental Pre-Trial Brief,[741] the Prosecution's Opening Statement,[742] and the Prosecution Rule 98 Skeleton Response[743] alleged that all crimes charged within the Indictment were either "within" the joint criminal enterprise or were "a foreseeable consequence" of the joint criminal enterprise. The Prosecution Notice Concerning Joint Criminal Enterprise changed the Prosecution's position, and alleged that only Counts 1 to 14 were within the joint criminal enterprise and were intended by the Accused and other participants.[744] Alternatively, the Prosecution alleged in this Notice that Counts 1, 2, 12, 13 and 14 were within the joint criminal enterprise and Counts 3 to 11 were foreseeable consequences of the joint criminal enterprise.[745] Although the information in the Prosecution Final Trial Brief does not provide notice of the charges to the Accused, it is

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[737] *See Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Revised Skeleton Motion for Judgement of Acquittal of the Second Accused Morris Kallon, 27 September 2006; Gbao Request for Leave on Form of Indictment; *Gbao* Decision on Request to Raise Objections to the Form of the Indictment, p. 2.
[738] *Ntabakuze* Interlocutory Appeal Decision, paras 45-46
[739] *See*, for example, *Simic* Appeal Judgement, para. 56, finding that notice given by the Prosecution for the first time in a Rule 98 Hearing is not timely.
[740] Indictment, paras 35, 37, 38. See the *AFRC* Appeal Judgement, para. 83.
[741] Supplemental Pre-Trial Brief, para. 9 read with paras 13, 296, 579.
[742] Transcript of 5 July 2004, David Crane, p. 25.
[743] Prosecution Rule 98 Skeleton Response to Rule 98 Motion, para. 18.
[744] Prosecution Notice Concerning JCE, para. 7.
[745] Prosecution Notice Concerning JCE, para. 8.

relevant here because the Prosecution reverted to its theory and submitted that Counts 1 to 14 were either within the joint criminal enterprise or were the foreseeable consequence of the joint criminal enterprise.[746]

388. The Prosecution ought to have set out its case more consistently. Nevertheless, the Indictment adequately put the Accused on notice of the Counts which were alleged to be relevant to each category of joint criminal enterprise, specifying that these crimes included "controlling the population of Sierra Leone; using members of the population to support the [joint criminal enterprise]; and specifically enumerated crimes such as 'unlawful killings, abductions, forced labour, physical and sexual violence'",[747] the use of child soldiers and the looting and burning of civilian structures,[748] as well as through crimes amounting to acts of terrorism or collective punishments.[749]

389. We are of the opinion that in the circumstances, the changes in the Prosecution Notice Concerning Joint Criminal Enterprise did not alter the Prosecution's theory of the third category of joint criminal enterprise to such an extent that it materially prejudiced the ability of the Accused to make full answer in defence. In addition, the Chamber considers that the Prosecution's communications subsequent to the Indictment served to limit the liability of the Accused by dropping Counts 15 to 18 from the ambit of the joint criminal enterprise. Consequently, the Chamber will consider only whether Counts 1 to 14 were intended by the Accused as participants of the common plan, or, in the alternative, whether these Counts were reasonably foreseeable consequences of the joint criminal enterprise.

390. The Chamber finds that the submission of Counsel for Kallon that the Indictment is defective because it fails to plead the alleged categories of joint criminal enterprise on which the Prosecution is relying in relation to each of the alleged offences, is devoid of merit.[750] Reading the Indictment as a whole, and in particular paragraph 38, incorporated by reference into each of the charges by paragraph 40, pleads the first and third categories of joint criminal

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[746] Prosecution Final Trial Brief, para. 242.
[747] AFRC Appeal Judgement, para. 83, interpreting para. 34 of the AFRC Indictment, which are nearly identical in all material respects to the RUF Indictment, para. 37.
[748] Indictment, para. 37.
[749] Indictment, para. 38, that specifies that the crimes charged under Articles 2, 3 and 4 of the Statute are either within or were the foreseeable consequence of the joint criminal enterprise: *AFRC* Appeal Judgement, para. 83.
[750] Kallon Final Trial Brief, paras 651-652.

enterprise as alleged modes of liability under Article 6(1) of the Statute. Therefore, the Chamber finds that the Indictment sufficiently specifies that the first and third categories of joint criminal enterprise are alleged as modes of liability in respect of every offence.[751]

391. The Chamber is of the considered opinion that in relation to the pleading of joint criminal enterprise as a mode of liability, the actual events alleged to form the basis for each Count are matters of evidence, and as such, do not need to be specified in the Indictment.[752] Therefore Kallon's argument that the Indictment does not distinguish between each category of joint criminal enterprise with respect to each offence is dismissed.[753]

392. The Kallon Defence also objects that the Indictment is defective because it does not specifically state that Kallon had the requisite intention for participation in any joint criminal enterprise. The only distinguishing feature of the different categories of joint criminal enterprise is the *mens rea* required.[754] The Indictment puts Kallon on notice of his alleged liability pursuant to the first and third forms of joint criminal enterprise.[755] The Pre-Trial Brief lists the *mens rea* requirements for joint criminal enterprise as falling under the committing mode of liability.[756] The Chamber finds that Kallon was put on notice that the Prosecution alleged that he intended the commission of the crimes charged in Counts 1 to 14 in order to further the purpose of the alleged joint criminal enterprise, or that he intended to take part in and contribute to the common purpose, and that the commission of any additional crimes charged under Counts 1 to 14 were, to Kallon, a natural and foreseeable consequence to Kallon of the common purpose.[757]

3.1.4.6. The role of the Accused in the joint criminal enterprise

393. The Kallon Defence objected in its Final Trial Brief that the Indictment is defective in form because it did not specify Kallon's alleged role in the joint criminal enterprise. A careful review of the Indictment reveals that it specifies the positions of authority allegedly held by the

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[751] *See* the analogous reasoning in the *Kmojelac* First Decision on Form of Indictment, para. 3.
[752] *Prosecutor v. Djordjevic*, IT-05-87/1-PT, Decision on Form of Indictment, 3 April 2008, paras 22-24.
[753] Kallon Final Trial Brief, para. 647. Kallon's objection on this point is not clearly articulated. This formulation represents the Chamber's best attempt to interpret the submission.
[754] *Tadic* Appeal Judgement, paras 227-228. *Supra* para. 352.
[755] Indictment, para. 38; Kallon Final Trial Brief, paras 658-659.
[756] Prosecution Pre-Trial Brief, para. 209.

three Accused within the RUF and the joint forces of the RUF and AFRC at paragraphs 19 to 33. Paragraph 34 of the Indictment then alleges that "in their respective positions referred to above" the three Accused "individually, or in concert with each other", and other participants, "exercised authority, command and control over all RUF, Junta and AFRC/RUF forces". The Indictment, therefore, put Kallon on notice that he was alleged to have participated in the joint criminal enterprise through his leadership role in the RUF. As we have previously noted, the Chamber dealt with similar objections at the pre-trial stage and found that the Indictment was pleaded with sufficient specificity.[758] We consider that the Accused were on notice of their alleged role in the joint criminal enterprise. The Chamber, therefore, holds that the Indictment is not defective in this respect.

3.1.5. Conclusions on the Pleading of Joint Criminal Enterprise

394. The Chamber must also consider whether the changes to the Prosecution's theory of the joint criminal enterprise, taken cumulatively, prevented the Accused from knowing the case they had to answer or materially prejudiced the defence. We are of the opinion that while the Prosecution's presentation of its theory of joint criminal enterprise was less than ideal, the Accused were on notice before and throughout the trial of the material facts underlying the alleged theory of joint criminal enterprise that will be considered by the Chamber. Even taken together, the changes in the Prosecution's theory of the joint enterprise did not amount to such a radical transformation of its case that the Accused were prevented from adequately preparing their defence, nor denied a fair trial.

3.2. The Pleading of the Material Facts and Modes of Liability Underlying the Accused's Responsibility Pursuant to Articles 6(1) and 6(3), Other than for Participation in a Joint Criminal Enterprise

395. Counsel for Sesay and Kallon also argued that the Indictment did not plead the material facts underlying their alleged culpability pursuant to the other modes of liability under Article 6(1) or under Article 6(3) with sufficient particularity.

3.2.1. The Degree of Specificity Required in Respect of Allegations of Personal Commission

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[757] *See* our discussion of the *mens rea* for joint criminal enterprise as a mode of commission, *supra* paras 264-266. *See also Simba* Appeal Judgement, para. 77.

[758] *Sesay* Decision on Form of Indictment, para. 30; *Kanu* Decision on Form of Indictment, para. 12.

under Article 6(1)

396. Both the Sesay and the Kallon Defence objected that allegations of personal commission in the Indictment were not pleaded with the required degree of specificity.[759] The Prosecution submitted generally that the Indictment complies with the applicable pleading principles and provided the Accused with sufficient notice of all material facts.[760] The Prosecution also addressed specifically the pleading and disclosure of several allegations of personal commission by Kallon under Article 6(1).[761]

397. The Chamber notes that the Prosecution's duty to provide particulars in the Indictment is at its highest when it alleges that the Accused have personally committed a crime. The Prosecution must fully adhere to the specificity requirements, subject to its ability to provide the relevant particulars.[762]

398. In this case, some witnesses were genuinely unable to provide precise details about the time or exact location of crimes said to have been committed by the Accused personally, or the identities of the victims of these crimes. However, "the Prosecution's obligation to provide particulars in the indictment is at its highest when it seeks to prove that the accused killed or harmed a specific individual."[763] The Chamber reiterates that the Prosecution was obliged to provide the Accused with the best information available in the Indictment.[764]

399. The Indictment does not specify the approximate times of day or locations or identify any of the victims of any of the crimes alleged to have been committed by the Accused personally.[765] The Indictment also fails to plead any other particulars in relation to allegations

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[759] Sesay Final Trial Brief, paras 1-4 and Annex A; Kallon Final Trial Brief, paras 105-108, 111-112, 737, 975, 977, 1207-1209, 1257, 1279, 1306, 1335.
[760] Prosecution Final Trial Brief, paras 93-96.
[761] Prosecution Final Trial Brief, paras 101-103.
[762] AFRC Appeal Judgement, para. 38; *Norman* Service and Arraignment Decision, paras 23, 28; *Talic* Decision on Form of Indictment, para. 22.
[763] *Ntakirutimana* Appeal Judgement, para. 74. *See also Naletilic and Martinovic* Appeal Judgement, paras 36-48, holding that the Indictment was defective because it failed to name two of the three prisoners the Accused was convicted of having beaten in a detention centre and because it did not provide the approximate dates of the events; *Kupreskic et al.* Appeal Judgement, para. 91, holding that the killing of six individuals in two houses on specific date clearly cannot fall within the sheer scale exception.
[764] *Talic* Decision on Form of Indictment, para. 22; *Norman* Service and Arraignment Decision, para. 28; *Kvocka et al.* Appeal Judgement, para. 30; *Kupreskic et al.* Appeal Judgment, paras 90, 92.
[765] See Indictment paras 38, 41-48 and the paragraph immediately following paragraph 53; paras 54-60, and the paragraph immediately following paragraph 60; para. 68 and the paragraph immediately following paragraph 68,

of personal commission. The Prosecution did not argue that it would have been impracticable for it to have included more detail in the Indictment. The Prosecution simply asserted that the pleading meets the relevant legal standards, or in the alternative, that any defects had been cured.[766] The Chamber is, therefore, not satisfied that the Prosecution provided the best information that it could in the Indictment. As a result, the Chamber finds that the Indictment is defective in form in that it fails to plead the material facts underlying allegations that the Accused personally committed the crimes charged in the Indictment.

400. The Chamber does not accept Kallon's submission that it is impossible to cure a defective indictment that fails to plead sufficiently allegations of an accused's personal commission.[767] Guided by the holding of the Appeals Chamber, we will consider whether the Prosecution has cured each allegation of personal commission by subsequent communications when the Chamber discusses the liability of the Accused for these crimes.[768]

3.2.2. The Degree of Specificity Required in Respect of Allegations Pursuant to the Remaining Modes of Liability Under Article 6(1)

401. The Sesay and Kallon Defence also argued that the Indictment ought to have pleaded allegations under Article 6(1), including the identity and number of victims, perpetrators and subordinates, with greater specificity.[769] The Kallon Defence argued further that Kallon did not receive adequate notice of the following material facts, which it submitted must be pleaded in the Indictment: all legal prerequisites to the application of the offences charged, the purpose of the alleged criminal conduct charged, as well as the proximity of the accused to the relevant events.[770]

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cited by way of example by the Prosecution as paragraphs pleading personal commission by the Accused Kallon: Prosecution Final Trial Brief, paras 100-103.

[766] Prosecution Final Trial Brief, paras 93, 95, 99-100, 104-111.

[767] *See* AFRC Appeal Judgement, para. 111.*See*, for example, *Muhimana* Appeal Judgement, paras 195-202; *Kvocka et al.* Appeal Judgement, para. 33; *Ntakirutimana* Appeal Judgement, paras 32-40, 62; *Niyitegeka* Appeal Judgement, paras 212, 218, 220, 224-228, 236-237; *Kupreskic et al.* Appeal Judgement, paras 92-93.

[768] *CDF* Appeal Judgement, para. 443; *Seromba* Appeal Judgement, para. 100; *Simic* Appeal Judgement, para. 24; *Gacumbitsi* Appeal Judgment, paras 175-179; *Ntagerura et al.* Appeal Judgement, para. 27; *Kvocka et al.* Appeal Judgement, para. 43; *Kupreskic et al.* Appeal Judgement, paras 92, 114. See also AFRC Appeal Judgement, para. 111.

[769] Sesay Final Trial Brief, paras 1-7, esp. paras 4-5 and Annex A; Kallon Final Trial Brief, paras 91, 1130, 1133, 1138, 1145, 1151, 1165, 1192, 1196, 1209, 1246, 1257, 1278, 1291 (victims); paras 89, 98-100, 1138-1139, 1257 (perpetrators); paras 88, 98-103, 176, 1257 (subordinates); paras 738-739, 1151, 1257, 1278 (other material facts).

[770] Kallon Final Trial Brief, paras 88-89, 176, 1207-1208, 1257, 1306, 1318, 1335.

402. The Chamber held, in the *Sesay* Form of Indictment Decision, that taking into consideration all of the circumstances of the conflict in Sierra Leone, and particularly the scale of crimes alleged in the Indictment, it was permissible for the Prosecution to identify victims and perpetrators only by category or group.[771] Given the scale of the crimes committed and the fluidity of the boundaries between different groups and individuals within the RUF and the AFRC, the Chamber considers that the allegations in the Indictment clearly fall within the ambit of the exception to the specificity requirement in international Indictments.[772] We do not find that the Defence has demonstrated the existence of a clear error of reasoning in the *Sesay* Form of Indictment Decision and we therefore decline to reconsider that decision.

3.2.3. The Pleading of the Different Modes of Responsibility under Article 6(1)

403. The Sesay and Kallon Defence both argued that that the Indictment ought to have distinguished more clearly the different modes of individual responsibility alleged under Article 6(1) in respect of each charge and that they were materially prejudiced by this defect.[773] The Prosecution submits that the Indictment, read as a whole, charges the Accused, in the alternative, with all modes pursuant to Article 6(1) and that the Accused have not been prejudiced by the fact that the Indictment does not plead the different modes of Article 6(1) responsibility separately.[774]

404. The Chamber, in its *Sesay* Form of Indictment Decision, held that whether the different modes of individual responsibility must be pleaded separately and distinguished as to their underlying material facts depended on the circumstances of each case.[775] The Chamber found that the pleading was valid.[776] The Sesay and Kallon Defence objections request that the Chamber reconsider this Decision.

405. We find that the facts underpinning the charges and the *mens rea* for each offence are

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[771] *Sesay* Decision on Form of Indictment, para. 20. *See* AFRC Appeal Judgement, para. 41. *See also Kanu* Decision on Form of Indictment, paras 19-21; *Kamara* Decision on Form of Indictment, para. 46.
[772] See the different phrasings referring to large numbers of victims contained in the Indictment, paras 46-47, 49, 51, 53, 62, 64, 65, 66, 67, 70, 73; paras 55, 56, 57, 60; para. 72; paras 48, 75; paras 55, 59; para. 71; para. 52; and para. 44.
[773] Sesay Final Trial Brief, paras 4-5; Kallon Final Trial Brief, paras 101, 113-115, 118-127.
[774] Prosecution Final Trial Brief, paras 99-100.
[775] *Sesay* Decision on Form of Indictment, para. 12.
[776] *Sesay* Decision on Form of Indictment, para. 34. *See also Kamara* Decision on Form of Indictment, para. 49; *Kondewa* Decision on Form of Indictment, paras 9-10.

adequately substantiated by the allegations made throughout the entire Indictment.[777] We are also of the considered view that the material facts that must be pleaded in the Indictment are to be determined in relation to the alleged criminal conduct of the Accused, not in relation to the legal characterization of these actions. The Chamber considers that the specific facts and circumstances of this case[778] rendered it impracticable for the Prosecution to plead separately the material facts underlying each specific mode of 6(1) responsibility.[779] We do not find that the Defence has demonstrated the existence of a clear error of reasoning in the *Sesay* Form of Indictment Decision and we therefore decline to reconsider our decision.

3.2.4. The Degree of Specificity Required in the Indictment in respect of Allegations of Superior Responsibility under Article 6(3)

406. The Sesay and Kallon Defence both argued in their Final Trial Briefs that the Indictment is defective because it does not plead adequately the material facts underlying the responsibility of the Accused pursuant to Article 6(3) of the Statue.[780] The Sesay Defence, relying on both the AFRC Appeal Judgement and the judgement of the ICTY Appeals Chamber in *Blaskic*,[781] submitted that the Indictment must plead the following particulars of allegations of superior responsibility under Article 6(3): the alleged perpetrators of the crimes; the conduct of the Accused by which he may have known or had reason to know that crimes were being committed or had been committed by his subordinates; the related conduct of those alleged subordinates and the relationship of the accused to his subordinates; his knowledge of the crimes; and the necessary and reasonable measures that he failed to take to

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[777] *Tolimir* Decision on Form of Indictment, para. 62. *See also Gacumbitsi* Appeal Judgement, Separate Opinion of Judge Shahabuddeen, paras 53-61. Since the Prosecution Pre-Trial Brief also set out, in detail, the mental element of each offence and mode of participation charged, the Kallon Defence was in no way prejudiced by this manner of pleading: See Prosecution Pre-Trial Brief, paras 124-188 setting out the elements of the alleged offences and paras 188-229 alleging the legal requirements, including the required *mens rea* for each mode of participation alleged.

[778] These considerations include the scale of the specific crimes charged, the circumstances under which the crimes were allegedly committed, the duration of time over which the said acts or events constituting the crimes occurred, the nature of the evidence provided by witnesses and the difficulty in conducting investigations in an immediate post-conflict environment.

[779] *Kvocka et al.* Appeal Judgement, para. 30. *See also CDF* Trial Judgement (TC), para. 36; *Kamara* Decision on Form of Indictment, para. 49; *Kondewa* Decision on Form of Indictment, para. 10.

[780] Sesay Final Trial Brief, paras 4-5; Kallon Final Trial Brief, paras 129-137, 535-544, 595, 618, 1138, 1207-1208, 1257, 1306, 1335.

[781] AFRC Appeal Judgment, para. 39, citing *Talic* Decision on Form of Indictment, para. 22; *Blaskic* Appeal Judgment, para. 218.

prevent the crimes or to punish his subordinates.[782] The Kallon Defence submitted that this Chamber should adopt the ICTY specificity standards as they are set out in the *Blaskic* Appeal Judgement.[783] The Kallon Defence also submitted that the Indictment is defective for failing to differentiate between the material facts underlying Kallon's alleged responsibility pursuant to Articles 6(1) and 6(3).[784] The Prosecution, on the other hand, argued that the Indictment meets the legal requirements in the Statute and the Rules.[785] Citing the *Sesay* Form of Indictment Decision, the Prosecution also submitted that it may be sufficient for the Indictment to plead the legal pre-requisites embodied in the provisions of the Statute.[786]

407. The Chamber considers that the material facts required to be pleaded in the Indictment are those articulated by the Appeals Chamber, namely, facts such as "the relationship of the accused to his subordinates, his knowledge of the crimes and the necessary and reasonable measures that he failed to take to prevent the crimes or to punish his subordinates".[787] The Chamber recalls that a lower degree of specificity is required in the Indictment when the Prosecution alleges liability under a theory of superior responsibility.[788]

408. Given the circumstances of this case, the Chamber finds that it is sufficient to describe the nature of the relationship between an Accused and his subordinate by reference to the command position of the Accused.[789] The Chamber finds that the identities of victims and perpetrators were pleaded with adequate particularity in relation to allegations under Article 6(3). It also was permissible for the Prosecution to plead the material facts underlying both individual and superior responsibility in a manner which was consistent with both.[790]

409. The Chamber observes that the *mens rea* of the Accused for liability as a superior is

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[782] Sesay Final Trial Brief, paras 4-5.
[783] Kallon Final Trial Brief, para. 129 citing the *Blaskic* Appeal Judgment, para. 218.
[784] Kallon Final Trial Brief, paras 121, 126, 127.
[785] Prosecution Final Trial Brief, para. 93.
[786] Prosecution Final Trial Brief, para. 95, citing *Sesay Decision on Form of Indictment*, para. 13-14.
[787] *AFRC* Appeal Judgement, para. 39; *Kmojelac* Second Decision on Form of Indictment, para. 18.
[788] *Ntagerura et al.* Trial Judgement, para. 35; *Kmojelac* Second Decision on Form of Indictment, para. 18, both cited with approval by the Appeals Chamber in the *AFRC* Appeal Judgement at para. 39.
[789] *Kmojelac* First Decision on Form of Indictment, para. 19.
[790] *Sesay* Decision on Form of Indictment, para. 14. *Kmojelac* First Decision on Form of Indictment, paras 3, 6-7. These findings were not contested on appeal: *Kmojelac* Appeal Judgement. The Prosecution also set out the material facts it alleged pursuant to Articles 6(1) and 6(3) at length in its Supplemental Pre-Trial Brief: at paras 304-309, 312-317, 320-325, 328-333, 336-341, 344-349, 352-357, 360-365, 369-374, 377-382, 385-390, 393-398,

pleaded explicitly in paragraph 39 of the Indictment and incorporated into each Count by paragraph 40.[791] The Accused's knowledge of the crimes and his failure to prevent or punish those crimes, therefore, is adequately pleaded in the Indictment.

410. Taking into account all of the foregoing considerations, we are of the view that the Kallon Defence has not demonstrated the existence of a clear error of reasoning in the *Sesay* Form of Indictment Decision where we upheld the form of the pleading of allegations of superior responsibility. We are of the opinion that, considering the scale and duration of the conflict, the nature of the evidence presented to the Court, and the complexities of the RUF command structure, the Accused were provided with adequate notice of the material facts underlying their alleged superior responsibility for the crimes set out in the Indictment. We do not find that the Defence has demonstrated the existence of a clear error of reasoning in the *Sesay* Form of Indictment Decision and we therefore decline to reconsider that decision.

3.3. Defence Objections to the Pleading of Other Material Facts

3.3.1. Whether the Pleading of Criminal Acts and Events in the Indictment is Exhaustive

411. Given that the Sesay and Kallon Defence have objected to the particularity with which material facts were pleaded in the Indictment, and in light of the evidence presented by the Prosecution, the Chamber deems it appropriate to consider whether the criminal acts listed in the Indictment form the only basis upon which the criminal liability of the Accused may be proven.[792] The Chamber observes that some paragraphs of the Indictment allege responsibility for only certain, specific criminal acts.[793] The Prosecution, nevertheless, has led evidence of a variety of potentially criminal acts which were not pleaded in the relevant paragraphs of the

401-406, 409-414, 418-423, 426-431, 434-439, 442-447, 450-455, 458-463, 466-471, 475-480, 483-488, 491-496, 499-504, 507-512, 515-520, 523-528, 532-537, 540-545, 548-553, 556-561, 564-569, 572-577.

[791] The Chamber also notes that the *mens rea* of each of the Accused founding their liability as superiors is outlined in the Prosecution Pre-Trial Brief, paras 123, 124, 219-229. The Prosecution Supplemental Pre-Trial Brief and three Prosecution Motions to add witnesses also contain certain facts from which Sesay and Kallon's knowledge of certain crimes and their failure to prevent or punish those crimes could be inferred.

[792] See particularly the Sesay Final Trial Brief, para. 241-242 and Kallon Final Trial Brief, paras 1257, 1278-1279.

[793] See Indictment, paras 62, 64-67, 70-71, 81, 83; See also paras 55-55, 59-60 alleging rape, but only by "member of the AFRC/RUF" and para. 63, which alleges only "beatings and ill-treatment of a number of civilians who were in custody". In contrast, see paras 56, 57, 59, 60, 72-76, which plead the criminal acts alleged in more open terms.

Indictment.[794]

412. The criminal acts which form the basis for a conviction are material facts which must be pleaded in the Indictment.[795] The Chamber, therefore, finds that the Indictment is defective where it failed to specify the criminal acts which the Prosecution alleged amounted to the crimes charged in the relevant Counts of the Indictment.[796]

413. In determining whether the Prosecution may cure such defects, the Chamber considers that the procedural history of this case is relevant.[797] In the Chamber's pre-trial Decision on the Form of the Sesay Indictment, the Chamber held that the phrase "but not limited to those events" - located in the paragraph immediately preceding the numbered Counts in each section of the Indictment - was "impermissibly broad and also objectionable in not specifying the precise allegations against the Accused. [...] In the Chamber's considered view, the use of such a formulation is tantamount to pleading by ambush."[798] The Chamber required the Prosecution to delete the impermissibly broad phrase in the Indictment, or to provide a Bill of Particulars listing specific additional events alleged against the Accused in each Count.[799] The Prosecution filed a Bill of Particulars on 3 November 2003[800] and deleted the said phrase from the Consolidated Indictment, which it filed on 5 February 2004.[801]

414. In the Bill of Particulars, the Prosecution specified the additional criminal acts on

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[794] For example, paragraph 62 of the Indictment, which pleads the acts of physical violence in Kono District that underpin the charges in Counts 10 and 11, specifies only one type of physical violence - mutilations. Although the Prosecution has argued that beatings and other forms of ill-treatment in Kono District can form the basis of a conviction on Count 11, the Indictment contains no mention of these forms of physical violence in Kono District. Notably, only para. 63 of the Indictment explicitly pleads beatings and ill-treatment of civilians in Kenema District.

[795] In both the CDF and AFRC Appeal Judgements, the Appeals Chamber found that certain paragraphs of the relevant indictments were defective for failing to list explicitly the acts of sexual violence upon which the Prosecution would rely to prove the offence: *CDF* Appeal Judgement, para. 442; *AFRC* Appeal Judgement, para. 106.

[796] *See CDF* Appeal Judgement, para. 442.

[797] *Muvunyi* Appeal Judgement, para. 99.

[798] *Sesay* Decision on Form of Indictment, para. 34. *See also Kanu* Decision, para. 25; *Kondewa* Decision, para. 11.

[799] *Sesay* Decision on Form of Indictment, para. 34. *See also Kanu* Decision, para. 25; *Kondewa* Decision, para. 11.

[800] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Bill of Particulars, 3 November 2003 [*Sesay* Bill of Particulars].

[801] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Consolidated Indictment, 5 February 2004, filed by the Prosecution following the Chamber's decision in *Prosecutor v. Sesay*, SCSL-03-05-PT, *Prosecutor v. Brima*, SCSL-03-06-PT, *Prosecutor v. Kallon*, SCSL-03-07-PT, *Prosecutor v. Gbao*, SCSL-03-09-PT, *Prosecutor v. Kamara*, SCSL-03-10-PT, *Prosecutor v. Kanu*, SCSL-03-13-PT, Decision and Order on the Prosecution Motion for Joinder (TC), 27 January 2004.

which it intended to rely to prove the guilt of the Accused in relation to various Counts in the Indictment. The Prosecution further particularised acts of sexual violence in Koinadugu, Bombali and Port Loko Districts as well as Freetown and the Western Area by adding the unacceptably vague phrase "other forms of sexual violence".[802]

415. The Chamber notes also that the Bill of Particulars added the allegation that "members of the AFRC/RUF carried out beatings and ill-treatment of a number of civilians in custody" in order to particularise the allegations of physical violence in Kenema District.[803] The Bill of Particulars also included allegations of mutilations in additional locations, although it did not allege any forms of physical violence other than mutilations outside of Kenema District.[804]

416. In respect to the enslavement charge,[805] the Prosecution specified only additional locations, but not additional forms of forced labour in the Bill of Particulars.[806] The Prosecution also added an allegation that Sesay was responsible for the burning of civilian buildings in Bombali District in support of the pillage charge.[807]

417. The Chamber finds it significant that in its February 2004 Request to Amend the Indictment, the Prosecution requested permission to add allegations that the Accused were responsible for the 'forced marriage' of large numbers of women,[808] to extend the timeframe pleaded in relation to allegations of forced labour in Kono District,[809] and to make several other minor corrections.[810] However, the Prosecution did not seek to amend the Indictment to include allegations that the Accused were responsible for any further criminal acts in relation to other Counts. In addition, the Prosecution removed the phrase "other forms of sexual violence" in paragraph 55, which specifies the acts of sexual violence underlying what are now

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[802] *Sesay* Bill of Particulars, paras 6-10. On the unacceptable vagueness of this phrase, see *CDF* Appeal Judgement, para. 442 and *AFRC* Appeal Judgement, para. 106. The Prosecution also added this phrase in relation to Kono District in the *Sesay* Bill of Particulars at para. 6; however, the phrase was subsequently removed by the Prosecution, *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Request for Leave to Amend the Indictment, 9 February 2004, Annex 1 (Amended Indictment), para. 55 [Prosecution 2004 Request to Amend the Indictment].

[803] *Sesay* Bill of Particulars, para. 12.

[804] *Sesay* Bill of Particulars, paras 11, 13, 14, 15.

[805] Now Count 13 of the Indictment.

[806] *Sesay* Bill of Particulars, paras 16-19.

[807] *Sesay* Bill of Particulars, para. 21.

[808] Prosecution 2004 Request to Amend the Indictment, paras 5A-5D and Annexes 1 and 2.

[809] Prosecution 2004 Request to Amend the Indictment, para. 5G and Annex 1, para. 71.

[810] Prosecution 2004 Request to Amend the Indictment, paras 5E-I and Annex 1.

Counts 6 to 9 of the Indictment in Kono District.[811]

418. As noted above, the Prosecution can cure a vague indictment by clear, consistent and timely disclosure.[812] However, the Prosecution was ordered by the Chamber to specify exhaustively the particular criminal acts for which it alleges the Accused bear responsibility. Where the Prosecution proceeds to do so, the Chamber considers that the Accused are entitled to prepare their defence on the basis that the list of alleged criminal acts pleaded in the Indictment are, in fact, exhaustive.[813] This conclusion is reinforced by the fact that the Prosecution sought to amend the Indictment, but only to add one additional type of criminal act. Entering a conviction based on evidence of criminal acts entirely different than those particularised in the Indictment would allow the Prosecution to amend its original allegations without seeking leave to amend the Indictment.[814] The amendment procedure was designed to give Defence Counsel the opportunity to make submissions, and to give the Chamber a chance to evaluate the potential impact of the proposed changes to the ability of the Defence to prepare their cases. In these circumstances, there is no question of curing a vague, general allegation through subsequent disclosure.

419. The Chamber will enter a conviction only in relation to criminal acts which were pleaded in the Indictment and for which the Prosecution has proven the liability of the Accused beyond reasonable doubt.[815] Where the Prosecution has pleaded the criminal acts alleged to underpin the liability of the Accused using the unacceptably vague phrases "other forms of sexual violence" however, the Chamber will consider whether the defect has been cured in our findings on the liability of the Accused, below.

3.3.2. The Pleading of Locations in the Indictment

420. The Sesay and Kallon Defence both argued in their Final Trial Briefs that the Indictment lacks minutiae particulars, is vague and therefore defective, because the Prosecution pleaded a non-exhaustive list of locations where crimes occurred in each District in Sierra

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[811] Prosecution 2004 Request to Amend the Indictment, para. 55.
[812] *CDF* Appeal Judgement, para. 443.
[813] *See Muvunyi* Appeal Judgement, para. 99, taking into account the procedural history of a case when determining whether a defective indictment could be cured.
[814] *Muvunyi* Appeal Judgement, para. 28 and also paras 99, 110.
[815] *See* Indictment paras 55, 62-67, 70, 71, 81.

Leone specified in the Indictment.[816] In addition, both Defence teams argued that Count 12 is defective as it is impermissibly vague for alleging that criminal acts were committed "throughout the Republic of Sierra Leone".[817]

421. The Prosecution argued that the degree of specificity with which an indictment must plead the locations of crimes will depend on the nature of the case. There may be cases where the specific locations of criminal activities cannot be listed.[818] The Prosecution contended that the Indictment specified that the crimes alleged occurred within the territory of Sierra Leone and that particular criminal acts were alleged to have occurred in named Districts, which are "discreet, narrow locations".[819] Further, as the Indictment pleads locations "including" certain named places, the Defence was on notice from the beginning of the trial that the list of named locations where criminal events took place was not exhaustive.[820] The Prosecution also argued that it was entitled to rely on the Chamber's pre-trial Decision on the Sesay Indictment.[821] In the Prosecution's submission, the Defence received notice of the specific locations in which crimes were alleged to have occurred through various disclosures of evidence such as witness summaries and statements, which cured any defects that the Chamber may find in the Indictment.[822] The Prosecution requested that the Chamber consider evidence in unpleaded locations to support the conviction of the Accused, but in the alternative, submitted that the Chamber could rely on this evidence to establish a consistent pattern of conduct and the existence of widespread and systematic attacks against the civilian population.[823]

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[816] Sesay Final Trial Brief, paras 6-7. Sesay argues that paras 58, 60, 67, 68, 73, 74, 83 of the Indictment should be struck. See also paras 669, 723-724; 790, 895-899, 900-924, 1041-1047, 1101-1106, 1198, 1219-1221, 1264, 1325; Kallon Final Trial Brief, paras 89, 92-95, 163-168, 172, 176, 953, 970, 974, 1033, 1044, 1145, 1151, 1208-1210, 1246, 1257, 1278-1279, 1291, 1306, 1318, 1335.

[817] Indictment, para. 68. Sesay Final Trial Brief, paras 7, 910-913, 1040, 1045, 1104; Kallon Final Trial Brief, paras 92-95.

[818] Prosecution Final Trial Brief, para. 117, citing the *Ntabakuze* Interlocutory Appeal Decision, paras 27(2)-(3). *See also* Prosecution Final Trial Brief, para. 115, giving the example of Wendedu, in Kono District, which is located very close to Koidu Town and is not named on maps.

[819] Prosecution Final Trial Brief, para. 113.

[820] Prosecution Final Trial Brief, para. 113.

[821] Prosecution Final Trial Brief, para. 115, relying on *Sesay* Decision on Form of Indictment, paras 23-24.

[822] Prosecution Final Trial Brief, para. 117. The Prosecution also argued that the Defence failed to object to evidence regarding criminal acts in unpleaded locations, although the Prosecution acknowledges that the Kallon Defence objected that Koidu Town in Kono was not pleaded in the Indictment in relation to Count 14: Prosecution Final Trial Brief, paras 118-119. This submission is incorrect. The Sesay Defence objected to the pleading of locations in the Indictment at the pre-trial phase and this objection was dismissed by the Chamber in the *Sesay* Decision on Form of Indictment at paras 23-24.

[823] Prosecution Final Trial Brief, para. 121.

422. The Chamber explicitly upheld the form of the pleading of the locations of criminal acts in the Indictment in its pre-trial decisions, including in the *Sesay* Form of the Indictment Decision.[824] The Chamber will therefore not revisit the matter. In addition, we note that the AFRC Appeals Judgement explicitly held that it falls within the discretion of a Trial Chamber to limit evidence that falls outside locations not specifically mentioned in the Indictment.[825] Therefore, we endorse the *Sesay* Decision on Form of Indictment as the degree of particularity with which locations must be pleaded will vary depending on the circumstances of the specific case.[826] We do not find that the Defence has demonstrated the existence of a clear error of reasoning in the *Sesay* Form of Indictment Decision and we therefore decline to reconsider that decision.

3.3.3. The Pleading of Timeframes in the Indictment

423. The Chamber notes that the Sesay and the Kallon Defence have both argued that the timeframes provided in the Indictment do not provide sufficiently precise notice of the timing of the crimes alleged against them.[827] Both Defence Counsels argued that the Chamber should not enter a conviction where there is uncertainty as to whether a crime or an event falls within the timeframe pleaded in the Indictment.[828]

424. The Prosecution, on the other hand, argued that the timeframes in the Indictment are sufficient to provide notice to the Defence, and emphasised that the timeframes pleaded are approximate. The Prosecution argued that time is not a material element of a crime and the guilt of an accused does not depend on time being proven.[829] Therefore, the Prosecution argues that where witnesses are contradictory or uncertain as to the time of events, it is not necessary for it to prove beyond reasonable doubt that an offence was committed within the timeframe

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[824] *Sesay* Decision on Form of Indictment, paras 23-24; *Kanu* Decision on Form of Indictment, para. 21; *Kondewa* Decision on Form of Indictment, para. 11; *Kamara* Decision on Form of Indictment, para. 45. See also *Norman* Decision on Service and Arraignment, paras 25, 29.

[825] *AFRC* Trial Judgement, para. 37.

[826] *Kvocka et al.* Appeal Judgement, paras 30-31; *Ntakirutimana* Appeal Decision, para. 75; *Kupreskic et al.* Appeal Judgement, para. 89; *Ntabakuze* Interlocutory Appeal Decision, para. 27.

[827] Sesay Final Trial Brief, para. 4; Kallon Final Trial Brief, paras 87, 89, 96-97, 164-168, 176, 970, 974, 1033-1034, 1257, 1306, 1318, 1130, 1133, 1138, 1145, 1151, 1165, 1192, 1196, 1208-1209, 1257, 1278-1279, 1291, 1306, 1318, 1335.

[828] Kallon Final Trial Brief, paras 163-168, 970.

[829] Prosecution Final Trial Brief, para. 79, citing in support of this position *R. v. Dossi*, (1919) 13 CR. App. R. 158, p. 159 (England and Wales Court of Appeal), cited with approval in *Rutaganda* Appeal Judgement, paras 296-306; *Prosecutor v. Kunarac et al.* Appeal Judgement, para. 217.

specified in the Indictment in order to obtain a conviction. In the Prosecution's submission, where the evidence indicates that the evidence occurred outside the Indictment timeframe, the Chamber must consider whether the Defence was prejudiced by being misled as to the allegation it must answer or by being required to answer a less specific allegation.[830] Only if the evidence refers to an event so clearly outside the Indictment timeframe that it could not be considered to refer to the same event as that pleaded in the Indictment, would the Defence suffer the requisite prejudice to bar a conviction.[831]

425. The Chamber considers that these submissions raise two interconnected issues: first, whether the Indictment pleaded the dates of the alleged crimes with sufficient specificity; and, second, whether and under what circumstances a conviction may be established for crimes which are not proven beyond reasonable doubt to have occurred within the relevant timeframe pleaded in the Indictment. The Chamber will address these two objections in turn.

3.3.3.1. Whether the timeframes pleaded in the Indictment are sufficiently specific

426. In our pre-trial *Sesay* Decision on Form of Indictment, the Chamber rejected the Sesay Defence argument that the formulation "at all times relevant to this Indictment" was insufficiently specific.[832] The precision with which the dates of crimes must be pleaded varies from case to case.[833] Where the scale of the crimes and the fallibility of witness recollection prevent the Prosecution from pleading timeframes with a greater degree of specificity, less information may be acceptable.[834] Thus, a broad date range does not, in and of itself, invalidate a pleading.[835] The timeframe pleaded in the Indictment, however, needs to provide the Accused with sufficient information for them to understand the nature of the charges and to prepare their defence.[836] We find it sufficient, given the factual context of this conflict and the inability of many Witnesses to provide precise times for events, that the structure of the Indictment and the timeframes pleaded therein correspond to specific events, attacks or phases

[830] Prosecution Final Trial Brief, para. 85.
[831] Prosecution Final Trial Brief, para. 85.
[832] *Sesay* Decision on Form of Indictment, para. 22.
[833] *Kamara* Decision on Form of Indictment, paras 38-39; *Ndindabahizi* Appeal Judgement, para. 20.
[834] *Muvunyi* Appeal Jugement, paras 58-59; *Kvocka et al.* Appeal Judgement, paras 30-31; *Ndindabahizi* Appeal Judgement, para. 20. *See also Muhimana* Appeal Judgement, para. 79; *Gacumbitsi* Appeal Judgement, para. 50; *Kupreskic et al.* Appeal Judgement, para. 89.
[835] *Muvunyi* Appeal Judgement, para. 58.

of the conflict.

427. With respect to the pleading of the continuous crimes pleaded in Counts 6 to 9 in Kailahun District, 12 and 13, the evidence led by the Prosecution alleges criminal responsibility for a widespread practice that continued over a long period of time. The evidence of individual victims is illustrative of the offences, but the gravamen of the charges does not hinge on the victimisation of any individual person at any particular time.

428. The Chamber considers, therefore, that this manner of pleading did not adversely affect the ability of the Accused to prepare their defence.

3.3.3.2. The circumstances under which a conviction may be entered in respect of crimes not proven to have occurred within the timeframe pleaded in the Indictment

429. In the present case, the relevant time periods in the Indictment are related to specific, identifiable events and the Indictment does not, itself, contain any references to the dates of individual criminal acts. The nature of the evidence and the factual circumstances of this conflict made it impracticable for the Prosecution to have pleaded the timeframes with greater specificity.[837] However, this mode of pleading affects the degree to which the Chamber is prepared to rely upon evidence not proven beyond reasonable doubt to have occurred within the pleaded timeframes. The Chamber considers that the timeframes pleaded in the Indictment assist the Accused in distinguishing between the conduct for which they are alleged to be criminally responsible for and other, similar conduct for which no responsibility is alleged.

430. Where there is a conflict in the evidence, with some credible evidence putting a crime within the timeframe pleaded in the Indictment in respect of that crime and some credible evidence putting the crime outside the relevant timeframe, the Chamber will enter a conviction in relation to the alleged crime in question only if the Accused was not prejudiced or misled by the discrepancy.[838]

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[836] *Ntakirutimana* Appeal Judgement, para. 25; *Ndindabahizi* Appeal Judgement, paras 19-20; *Kvocka et al.* Appeal Judgement, para. 30.

[837] *Sesay* Decision on Form of Indictment, para. 21, 34; *Kanu* Decision on Form of Indictment, para. 21; *Kamara* Decision on Form of Indictment, paras 38-39.

[838] *See*, for example, *Rutaganda* Appeal Judgement, para. 301-303; *Niyitegeka* Appeal Judgement, paras 70-71; *Kunarac* Appeal Judgement, paras 240-243. Of course, the elements of the offence must also be proven beyond a

431. Where all of the credible evidence places a particular crime outside the Indictment timeframe, this evidence may still form the basis for a conviction where the crime is proven to have occurred within a reasonable approximation of the timeframe, provided that the discrepancy did not prejudice the Accused.[839] The Chamber considers that such crimes must, at the very least, have occurred as part of an attack or specific series of events to which the Indictment timeframe relates. In particular, we consider that crimes which are proven to have occurred, or may have occurred, at the time of the August 1998 Fiti Fata mission in Kono District, the December 1998 attack on Koidu Town in Kono District, the December 1998 attack on Makeni in Bombali District and its aftermath, will not be considered as forming the basis for a criminal conviction. The Chamber is of the view that the Accused were not on notice that they were charged with crimes committed during these attacks, and, therefore, their ability to defend themselves against these charges was prejudiced.[840]

432. The Chamber was entirely unable to determine a timeframe for many of the events recounted by Witnesses during trial. The Chamber is strongly of the view that it would be unfair to the Accused to convict the Accused of crimes where the evidence is entirely indeterminate as to the date of their occurrence.

3.4. Other Discrete Objections to the Indictment Raised by the Accused

3.4.1. Kallon's Opportunity to Enter a Plea to the Amended Indictment

433. The Kallon Defence submitted that it did not have the opportunity to enter a plea to the amended Indictment.[841] Counsel for Kallon submitted that the Indictment as amended introduced *inter alia*, new alleged members of the joint criminal enterprise, crimes bases and timeframes.[842] It therefore submitted that the Indictment as amended contained new charges, and argued that Kallon should have been permitted to enter a plea in relation to each and

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reasonable doubt. Both the Prosecution and the Sesay Defence supported their arguments on common law jurisprudence. Although the Chamber considers the case-law of the *ad hoc* Tribunals to be more persuasive, we have also considered the common law cases cited by the parties.

[839] See, for example, *Rutaganda*, paras 302-303; *Niyitegeka* Appeal Judgement, paras 70-71.

[840] We note that the Prosecution's motion to amend the Indictment period with respect to Kono District was denied by the Chamber in: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Application for Leave to Amend the Indictment (TC), 31 July 2006, esp. paras 33-37, 42-43. *See also Muvunyi* Appeal Judgement, para. 30.

[841] Kallon Final Trial Brief, paras 52-70.

[842] Kallon Final Trial Brief, para. 70.

every charge in the Indictment. As that right was denied, the Kallon Defence now argues that the Indictment with which the Accused currently stands charged is invalid.[843]

434. The Chamber recalls that it disposed of a similar challenge by the Kallon Defence in its Decision on the Quashing of the Consolidated Indictment of 21 April 2004 and in its Decision on Motion on Issues of Urgent Concern to the Accused Morris Kallon of 9 December 2004.[844] In both decisions, the Chamber held by a majority that the new Indictment only provided greater specificity without adding any new crimes or charges.[845]

435. The Chamber reaffirms the law as expounded in those decisions and accordingly finds no merit in the Kallon Defence's contention.

3.4.2. Kallon's Argument regarding conduct charged under Common Article 3 and Additional Protocol II

436. The Kallon Defence submitted that (i) the Indictment charges conduct as a violation of both Common Article 3 and Protocol II, where the proscribed conduct is only expressly prohibited by Additional Protocol II (Counts 1, 2, 14)[846] and (ii) it charges conduct which is a violation of Common Article 3 and Additional Protocol II without specifying which of the two distinct bodies of law it is relying upon (Counts 5, 9, 10, 17, 18).[847] It submitted that as the requirements for an "armed conflict" differ under Additional Protocol II and Common Article 3, the Indictment is defective in failing to specify which body of law the Prosecution is relying on with respect to each offence.[848]

437. The Kallon Defence also submitted that the Indictment does not plead the nature of

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[843] Kallon Final Trial Brief, para. 70.
[844] *Kallon* Decision on Motion to Quash; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Matters of Urgent Concern to the Accused Morris Kallon, 9 December 2004.
[845] The Kallon Defence relies in part on the dissenting opinion of Justice Itoe in the Motion on Issues of Urgent Concern to the Accused Morris Kallon, in which he held that Kallon should have been arraigned on all the Counts of the amended consolidated Indictment, and on a similar dissenting opinion in the CDF Case. Kallon Final Trial Brief, paras 58, 64 referring to *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Partially Dissenting Opinion of Hon. Justice Benjamin Mutanga Itoe on the Chamber Majority Decision of the 9th of December 2004 on the Motion on Issues of Urgent Concern to the Accused Morris Kallon, 18 March 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Dissenting Opinion of Hon. Judge Benjamin Mutanga Itoe, Presiding Judge, on the Chamber Majority Decision supported by Hon. Judge Bankole Thompson's Separate but Concurring Opinion, on the Motion Filed by the Third Accused, Allieu Kondewa, for Service of Consolidated Indictment and a Second Appearance, 13 December 2004.
[846] Kallon Final Trial Brief, paras 43, 45.
[847] Kallon Final Trial Brief, paras 43, 46, 47.

the armed conflict that existed within Sierra Leone, which it argued is a material fact that must be pleaded.[849] It further argued that the Pre-Trial Brief makes several allegations that are consistent with an international armed conflict and that the Prosecution has therefore pleaded that the conflict is of an international nature. It submitted that the Prosecution has thus pleaded a case that precludes liability for crimes which fall solely under Additional Protocol II,[850] and that Kallon should be acquitted therefore on Counts 1, 2, 5, 9, 10 and 14.[851]

438. With respect to the first argument, the Chamber notes that the Accused are charged with offences under the Statute of the Special Court, not crimes under Additional Protocol II or Common Article 3. The Counts of the Indictment charge the Accused with the relevant subsection of Article 3 of the Statute, and in so doing simply quote the title and preamble of this Article of the Statute which states that crimes under this Article are "[v]iolation[s] of Article 3 Common to the Geneva Conventions and of Additional Protocol II". The Chamber is of the view that as the Prosecution has clearly identified in each Count the relevant subsection of Article 3 with which the Accused are charged, there is no further requirement that it set out whether the offence charged is prohibited under Additional Protocol II or Common Article 3.

439. The Chamber observes that in the CDF Appeal Judgement, the Appeals Chamber noted that the Indictment did not specify which provision of Additional Protocol II or Common Article 3, and thus which definition of the crime applied with respect to the crime of terrorism. However, it held that this was acceptable as long as it was clear that it was the intention and understanding of all of the parties from the outset of the trial which definition of terrorism applied.[852]

440. The Chamber is of the view that while notice must be provided in the Indictment, or by subsequent disclosure, of which definition of a particular offence applies, there is no general requirement that the Indictment must specify whether a crime falls under Additional Protocol II or Common Article 3 with respect to which threshold of armed conflict applies.

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[848] Kallon Final Trial Brief, para. 44.
[849] Kallon Final Trial Brief, para. 48.
[850] Kallon Final Trial Brief, paras 50-51.
[851] Kallon Final Trial Brief, paras 48-51.
[852] *CDF* Appeal Judgement, para. 349.

441. The Chamber emphasises that we will consider the characterisation of each crime in the Applicable Law section and in our Legal Findings. Article 3 of the Statute enumerates a list of crimes, without differentiating which are prohibited under Common Article 3 and which are prohibited under Additional Protocol II. In the Applicable Law section which follows, the Chamber clearly delineates which crimes listed in Article 3 are prohibited under Additional Protocol II, which crimes are prohibited under Common Article 3 and which are prohibited under both. The Chamber also distinguishes the criteria for establishing an armed conflict under Common Article 3 and under Additional Protocol II.

442. In determining whether the chapeau requirement of an "armed conflict" under Article 3 of the Statute is met, the Chamber will consider for each crime prohibited under Common Article 3, whether the criteria for the establishment ("the applicability test") of an "armed conflict" under Common Article 3 have been met, and for each crime prohibited under Additional Protocol II, whether the higher threshold for the establishment of an "armed conflict" under Additional Protocol II has been met.

443. With respect to the second argument, the Chamber notes that the Appeals Chamber has previously held that "Article 3 of the Statute is explicitly taken from Common Article 3 to the Geneva Conventions and Additional Protocol II".[853] The Appeals Chamber has further held that:

> The distinction [between the rules applicable in internal armed conflict and the rules applicable in international conflict] is no longer of great relevance in relation to the crimes articulated in Article 3 of the Statute *as these crimes are prohibited in all conflicts*. Crimes during internal armed conflict form part of the broader category of crimes during international armed conflict. In respect of Article 3, therefore, the Court need only be satisfied that an armed conflict existed and that the alleged violations related to the armed conflict.[854]

444. The Chamber made a similar finding in its Rule 98 decision, where it held that "it is immaterial whether the conflict is internal or international in nature".[855]

445. Given thee statements by the Appeals Chamber we find that the nature of the armed conflict is not a material fact in the context of war crimes chargeable under our Statute.

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[853] *CDF* Appeal Decision on Nature of Armed Conflict, para. 20.
[854] *CDF* Appeal Decision on Nature of Armed Conflict, para. 25 [emphasis in original]. *See also supra* para. 64.
[855] Transcript of 25 October 2006, p. 15, referring to *CDF* Rule 98 Decision, para. 68.

446. The Chamber further notes that the Trial Chamber in the *Dragomir Milosevic* case has held that where the Prosecution makes no claim that there is an international armed conflict, and the alleged armed conflict is internal in nature, the nature of the conflict is not a material fact that must be pleaded.[856]

447. For the reasons discussed below in the Legal Findings section, the Chamber does not find that the allegations in the Pre-Trial brief are consistent with an international armed conflict.[857] It therefore does not find that the Prosecution has pleaded that the conflict is of an international nature. The Chamber therefore rejects the argument of the Kallon Defence that the Indictment is defective in this respect.

3.4.3. The Pleading of the Chapeau Requirements for Crimes Against Humanity

448. The Kallon Defence submitted that the Indictment alleges only in the General Allegations that "all acts and omissions charged herein were committed as part of a widespread or systematic attack directed against the civilian population".[858] The Kallon Defence argued that this is not sufficient, and that the Prosecution was required to plead, with respect to each specific Count charged as a crime against humanity, what type of attack the crime formed part of (that is, whether the crime formed part of a widespread attack or a systematic attack).[859]

449. The Chamber notes that it is now settled law that the requirement of an attack for crimes against humanity is disjunctive, not cumulative.[860] Once the Chamber is convinced that either requirement is met, it is not obliged to consider whether the alternative qualifier is also met.[861] The Chamber is therefore of the view that the widespread or systematic nature of the attack may be pleaded in the alternative, and thus that the Prosecution is not required to specify, for each Count alleging a crime against humanity, whether it formed part of a systematic attack or a widespread attack. Again we find that the arguments of the Kallon

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[856] *D. Milosevic* Trial Judgement, para. 17, where the Trial Chamber held that "[t]he Appeals Chamber in *Hadzihasanovic* held that where the Prosecution relies on the existence of an international armed conflict, the Prosecution must plead as a material fact the international character of the armed conflict and the 'basis upon which such an assertion is made', including the identity of the foreign entities. However, where there is no claim of an international armed conflict and the alleged armed conflict is internal in nature, the jurisprudence of the tribunal has established no equivalent requirement".

[857] See our findings on the General Requirements, *infra* paras 971-977.

[858] Kallon Final Trial Brief, para. 158.

[859] Kallon Final Trial Brief, paras 157-160.

[860] *Kordic and Cerkez* Appeal Judgement, para. 93; *Kunarac et al.* Appeal Judgement, para. 97.

Defence here are misconceived.

3.4.4. The Pleading of Counts 1 and 2

450. The Sesay Defence submitted that the pleading of Counts 1 and 2 in the Indictment and the Pre-Trial Brief is limited to the crimes enumerated in Counts 3 to 14.[862] It therefore submitted that the Chamber cannot consider conduct that does not amount to a crime under these Counts in order to establish liability for acts of terrorism or collective punishments.[863] In particular, the Sesay Defence alleged that the Chamber should not consider "burning" in relation to the Count of terrorism, as it does not constitute one of the crimes enumerated in Counts 3 to 14 of the Indictment.[864]

451. The Indictment states at paragraph 44 that the Accused "committed the crimes set forth in paragraphs 45 through 82 and charged in Counts 3 through 14, as part of a campaign to terrorise the civilian population [and] also committed the crimes to punish the civilian population".

452. The CDF Indictment contains a similarly worded paragraph, stating that the CDF "committed the crimes set forth in paragraphs 22 to 26 and charged in Counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorise the civilian populations of those areas [and] also committed the crimes to punish the civilian population."[865]

453. The Appeals Chamber in the CDF Appeal Judgement found that this paragraph was "clear in establishing that the material facts supporting criminal responsibility for the Count of terrorism were the material facts pleaded in relation to the Counts pleaded in the Indictment".[866] It therefore held that conduct that was adequately pleaded in the Indictment should have been considered under this offence, even if such conduct did not satisfy the

[861] *Kunarac et al.* Appeal Judgement, para. 93.
[862] Sesay Final Trial Brief, paras 102-104, 116.
[863] Sesay Final Trial Brief, paras 102-104, 116.
[864] Sesay Final Trial Brief, para. 113.
[865] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-I, Indictment, 4 February 2004, para. 28 [CDF Indictment].
[866] CDF Appeal Judgement, para. 359.

elements of the crimes enumerated in paragraph 28.[867]

454. The Sesay Defence submitted, however, that the CDF Indictment differs from the RUF Indictment, in that it specifically pleads other acts which go beyond the enumerated crimes, namely "threats to kill, destroy and loot", which were not pleaded in the RUF Indictment.[868] Paragraph 28 of the CDF Indictment states clearly, however, that the crimes enumerated in the Counts *included* "threats to kill, destroy and loot". The Chamber therefore opines that the "threats to kill, destroy and loot" did not constitute additional acts going beyond the crimes listed in the CDF Indictment, but were rather a specification of some of the enumerated crimes. The Chamber therefore finds that the difference in the wording of the CDF and RUF Indictments is immaterial.

455. Guided by the Appeals Chamber's finding in CDF, the Chamber therefore finds that paragraph 44 of the Indictment clearly establishes that the material facts supporting criminal responsibility for the Counts of terrorism and collective punishment are the material facts pleaded in relation to the Counts pleaded in the Indictment. Conduct that is adequately pleaded in the Indictment will therefore be considered under the offences of terrorism and collective punishment, even if such conduct does not satisfy the elements of any other crimes charged in the Indictment. In particular, as elaborated more fully in the Applicable Law section, we find that acts of burning are capable of spreading terror even though they do not satisfy the elements of pillage.[869]

3.4.5. The Pleading of Count 7 and the Rule Against Duplicity

456. The Kallon Defence argued that Count 7 charges two separate and distinct crimes ("sexual slavery" and "any other form of sexual violence") as one, and thus violates the rule against multiplicity, duplicity or vagueness.[870] The Kallon Defence noted that the Appeals Chamber found a similar Count in the AFRC Indictment was duplicitous, and noted the remedies set out by the Appeals Chamber in the AFRC Appeal Judgement as available to the Trial Chamber in light of this duplicity. It also noted the Prosecutor's Notice re Count 7 of the

[867] *CDF* Appeal Judgement, paras 362-364.
[868] Sesay Final Trial Brief, para. 103.
[869] *CDF* Appeal Judgement, para. 359.
[870] Kallon Final Trial Brief, paras 147, 1105.

Indictment, in which the Prosecution elected to proceed on the basis of sexual slavery alone.[871] However, it submitted that the Prosecution may not unilaterally elect which crime to proceed upon. The Kallon Defence argued that, in accordance with the AFRC Appeal Judgement, the power of election lies solely with the Trial Chamber and that the most appropriate remedy is that it should make that election only after a comprehensive review of the evidence, and a determination of which of the elements of the duplicitous Counts the defence has defended fully.[872]

457. Guided by the Appeals Chamber's finding that Count 7 in the AFRC Indictment was duplicitous for having charged separate and distinct offences, "sexual slavery" and "any other form of sexual violence", in the same Count,[873] the Chamber finds that Count 7 of the RUF Indictment, which reflects the same wording as Count 7 of the AFRC Indictment, is bad for duplicity.

458. The Chamber has considered the remedies available to it as outlined by the Appeals Chamber.[874] In so doing, we have taken into account the Prosecution's Notice re Count 7 of the Indictment in which the Prosecution requested permission to proceed on the basis of the offence of sexual slavery and not on the offence of any other form of sexual violence.[875] It is the considered view of this Chamber that the Prosecution cannot unilaterally elect upon which crime to proceed.[876] However, in light of all of the circumstances of this trial and the evidence that has been led, the Chamber is satisfied that the appropriate remedy is to proceed on the basis that the offence of sexual slavery is properly charged within Count 7 and to strike out the charge of "any other form of sexual violence".[877] As a result, the Chamber will only consider whether or not the offence of sexual slavery has been established in this case.

3.4.6. The Pleading of Count 8 and the Rule Against Redundancy of Counts

459. Kallon submitted that it is duplicitous to charge two Counts of "other inhumane acts"

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[871] Kallon Final Trial Brief, paras 147-148.
[872] Kallon Final Trial Brief, para. 153.
[873] *AFRC* Appeal Judgement, paras 102-103.
[874] *AFRC* Appeal Judgement, para. 108.
[875] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Notice re Count 7, 29 April 2008, para. 7 [Prosecution Notice re Count 7].
[876] The Prosecution, in its Notice re Count 7, stated at para. 7 that "the charge of any other form of sexual violence" in Count 7 should, with the permission of the Trial Chamber, not be considered".

in Counts 8 and 11.[878] It claims that this placed Kallon in the unfair situation of having to plead and answer to the same offence twice. It therefore submitted that that one of these two Counts should be declared redundant.[879]

460. The Chamber recalls that the Indictment in Count 8 charges the Accused with "other inhumane acts" as a crime against humanity under Article 2 of the Statute. This Count relates to the Accused's alleged responsibility for the women and girls being forced into "marriages" and being forced to perform a number of conjugal duties under coercion by their "husbands" in Kono District, Koinadugu District, Bombali District, Kailahun District, Freetown and the Western Area and Port Loko District in different time periods relevant to the Indictment.[880] Count 11 charges the Accused with the same offence, but is related instead to the Accused's alleged responsibility for acts of violence including beatings and ill-treatment of civilians in Kenema District and the mutilation of civilians in Kono District, Koinadugu District, Bombali District, Freetown and the Western Area and Port Loko District between about May 1997 and April 1999.[881]

461. The Chamber wishes to emphasize as a matter of law that the rule against duplicity prohibits the charging of two separate offences in the same Count.[882] It is our considered view that neither Count 8 nor Count 11 separately and singly charge the two separate offences referred to. Rather, the Chamber finds, significantly, that the Accused are charged with the same crime in respect of two entirely different legal situations. In our considered view, therefore, the objection is absolutely misconceived.

462. As the material facts underlying the offences as set out in the different Counts were pleaded with sufficient specificity, the Kallon's Defence was fully aware of the case he had to

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[877] *AFRC* Appeal Judgement, para. 109.
[878] Kallon Final Trial Brief, para. 1108.
[879] Kallon Final Trial Brief, para. 1108. Kallon also raised this issue in the Rule 98 proceedings. In its Oral Rule 98 Decision, the Chamber held that "with regard to Count 8, the Chamber recalls that Counsel for the First Accused submitted that Count 8 of the Indictment is "legally impermissible and/or is duplicitous and/or is entirely redundant". Counsel for the Second Accused took much the same position as regards this Count. In the Chamber's considered opinion, this submission clearly goes to the root of the form of the Indictment. It cannot, therefore, be examined at this stage as to its merits by reason of the provisions of Rule 72(B)(ii) of the Rules of Procedure and Evidence. We do so hold. This is, of course, without prejudice to the right of the Defence to raise such issues in their final closing arguments." RUF Oral Rule 98 Decision, Transcript of 25 October 2008, p. 8.
[880] Indictment, paras 54-60.
[881] Indictment, paras 61-67.
[882] *AFRC* Trial Judgement, paras 103, 205.

answer with respect to this crime as it was charged in each Count. He therefore suffered no prejudice with respect to the pleading of "other inhumane acts" in both Counts 8 and 11 of the Indictment.

3.4.7. The Pleading of Counts 8 and 9

3.4.7.1. Gbao Defence argument regarding the pleading of Count 8

463. The Gbao Defence submitted that when seeking to amend the Indictment to add Count 8, the Prosecution referred solely to Count 8 as a charge of 'forced marriage.' Further, in granting leave to the Prosecution to amend the Indictment, the Chamber addressed the proposed additional Count as being restricted to charges of 'forced marriage,' and did not address the possibility of any other crimes being charged under Count 8.[883] The Gbao Defence submitted that the Prosecution should therefore be precluded from arguing that claims unrelated to 'forced marriage' can be considered under Count 8 of the Indictment.[884]

464. The Chamber recalls that in seeking leave to amend the Indictment, the Prosecution specifically sought leave to add a new charge of 'forced marriage' as an "other inhumane act"[885] and thereafter consistently indicated that Count 8 relates solely to 'forced marriage.' The Chamber notes further that in its Final Trial Brief, the Prosecution made no submission to the effect that "other inhumane acts" other than 'forced marriage' should be considered in determining the Accused's liability under Count 8 of the Indictment.[886]

465. Predicated upon the foregoing, the Chamber is certainly not disposed to consider acts that are not related to 'forced marriage' under Count 8 even if they could be capable of constituting an "other inhumane act".

3.4.7.2. Sesay Defence argument regarding the pleading of (Counts 8 and 9)

466. The Sesay Defence also argued in its Final Trial Brief that the crime of 'forced marriage'

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[883] Gbao Final Trial Brief, paras 993-994.
[884] Gbao Final Trial Brief, para. 995.
[885] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-05-14-PT, Request for Leave to Amend the Indictment, 9 February 2004, para. 4. The Prosecution specifically sought leave to add a new charge of "Crimes Against Humanity: Other Inhumane Acts (forced marriage)" [Prosecution Request to Amend Indictment].
[886] Prosecution Final Trial Brief, paras 643-652.

has been defectively pleaded.[887] It submitted that in the 2004 Request for Leave to Amend the Indictment,[888] the Prosecution argued that 'forced marriage' was fundamentally a sexual crime based on the same underlying material facts as the existing charges. As such, 'forced marriage' was originally pleaded as being primarily a sexual crime.[889] Counsel for Sesay contended that in the Prosecution's Rule 98 motion, however, the Prosecution changed its position and characterised the crime of 'forced marriage' as one which was not predominantly sexual in nature.[890] This position has since been confirmed by the Appeals Chamber in the CDF Appeals Judgement.[891] The Sesay Defence argued that it was misled as to the material elements of the 'forced marriage' Count, and this defect was not cured. Therefore, the Chamber should dismiss Count 8, and in the alternative, Count 9 of the Indictment for lack of notice.[892]

467. In the AFRC Appeal Judgement, although the Appeals Chamber noted the confusion caused by the Prosecution's placement of the offence of 'forced marriage' under the sexual violence section of the Indictment, it ultimately held that the Trial Chamber should have considered the crime of 'forced marriage' as a non-sexual offence.[893] The Chamber notes that there is no requirement that the Indictment plead the legal characterization of the crime, as long as it adequately pleads the material facts underlying the offence. The Chamber finds that the material facts underlying the offence of 'forced marriage' were sufficiently pleaded in the Prosecution Request for Leave to Amend the Indictment[894] and in the amended Indictment itself. While the Chamber finds that the Prosecution may have created confusion by its initial characterization of the offence as predominantly sexual in nature, it does not find that the offence of 'forced marriage,' as pleaded in Count 8 or Count 9, is defective on this basis.

3.4.7.3. Kallon Defence argument that Count 9 is insufficiently specific

468. Count 9 charges the Accused with outrages upon personal dignity based on their alleged responsibility for the acts outlined in Counts 6 to 8 – that is, "rape", "sexual slavery", "other inhumane acts" and "any other form of sexual violence". Kallon submitted that the

[887] Sesay Final Trial Brief, paras 95-100.
[888] Prosecution Request to Amend Indictment.
[889] Sesay Final Trial Brief, paras 96-98.
[890] Sesay Final Trial Brief, para. 99.
[891] AFRC Appeal Judgement, paras 195-196.
[892] Sesay Final Trial Brief, paras 95-100.
[893] AFRC Appeal Judgement, paras 181, 196.
[894] Prosecution Request to Amend Indictment.

Chamber should follow Trial Chamber II, which, based on an identical Count in the AFRC Indictment, held that "given the broad scope of the offence of "any other form of sexual violence", it was essential for the Indictment to clearly identify the specific offence or offences which the Accused are required to answer.[895] Trial Chamber II found that the Indictment was defective in this respect because it failed to plead material facts with sufficient precision.[896] Trial Chamber II therefore dismissed "any other form of sexual violence" as a basis for charges of "outrages of personal dignity", a finding which was undisturbed on appeal.[897] The Kallon Defence submitted that similarly, the allegations of "any other form of sexual violence" cannot be used to substantiate Count 9, and it should therefore be dismissed in part.

469. The Chamber recalls that it has found that Count 7 was bad for duplicity, and as a remedy, struck out "any other form of sexual violence" from this Count. However, the Chamber opines that conduct which constitutes "any other form of sexual violence" could still be considered as the basis for charges of "outrages of personal dignity".

470. The Chamber, however, recalls that the Appeals Chamber in the AFRC Case held that "the residual nature of the crime of "any other form of sexual violence" requires clarification of the conduct the Prosecution would rely on to prove the offence.[898] The Indictment does not provide any such clarification. The Chamber must therefore consider whether this defect has been cured.

3.5. Conclusions on the Sufficiency of the Indictment

471. The Chamber has found that the Indictment is defective in several respects, namely:

(i) The pleading of the second category of joint criminal enterprise, which will not be considered;

(ii) The pleading of the material facts underlying allegations of personal commission by the Accused, which defects may be cured;

(iii) The pleading of the material facts underlying allegations of individual responsibility where the acts of the Accused victimised a specifically identified person or persons, and the identity of specifically identified combatant or

[895] Kallon Final Trial Brief, paras 155-156.
[896] *AFRC* Trial Judgement, para. 21.
[897] *AFRC* Trial Judgement, para. 21.
[898] *AFRC* Appeal Judgement, para. 106.

combatants involved in the commission of these crimes, which defects may be cured; and

(iv) The failure to plead certain types of criminal acts regarding which evidence was led, which will not form the basis for any conviction.

472. The Trial Chamber is satisfied that, although the Prosecution does not appear to have exercised the diligence which could have been expected with respect to the pleading of other material facts in the Indictment, the ability of the Accused to prepare their defence was not materially prejudiced. The Chamber does not consider that the volume of defects in the Indictment, taken cumulatively, has deprived any of the Accused of their right to a fair trial.[899]

[899] On the need to consider the effect of defects in the Indictment, and the reliance on post-Indictment submissions to cure such defects, on the fairness of the proceedings as a whole, *see Ntagerura et al* Appeal Judgement, para. 114; *Ntabakuze* Interlocutory Appeal Decision, paras 25-26.

V. EVALUATION OF EVIDENCE

1. Introduction

473. The Rules of Procedure and Evidence confer upon the Chamber, the discretion to apply the Rules in a way which best favours a fair determination of the trial proceedings.[900] However, the Rules must be "applied in their context and according to their purpose in progressing the relevant stage of the trial process fairly and effectively"[901] and, according to the Appeals Chamber, the language used in the Rules "should be given its ordinary meaning." Given this broad discretion, it is appropriate for the Chamber to outline some of the basic standards applied.

1.1. Admission of "Relevant" Evidence

474. Under the Rules, the Chamber may admit all "relevant evidence".[902] The Chamber understands relevant evidence to be any evidence that could have a bearing on the guilt or innocence of the Accused for the crimes charged under the Indictment. The assessment and determination of evidential weight is a separate issue and unless otherwise stated, has been made by the Judges during final deliberations.[903] This approach is consonant with established principles of international criminal procedure.[904]

1.2. Presumption of Innocence and Standard of Proof

475. Article 17(3) of the Statute enshrines the principle that an Accused person is presumed innocent until proven guilty. The Prosecution alone bears the burden of establishing the guilt of the Accused. Each fact on which a conviction is based must be proven beyond reasonable doubt.

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[900] Rule 89 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, as last Amended [Rules].
[901] *Norman* Appeal Decision on Amendment of Indictment, para. 45.
[902] Rule 89(C) of the Rules.
[903] *See Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR65, Fofana – Appeal Against Decision Refusing Bail (AC), 11 March 2005, paras 22-24 [*Fofana* Appeal Decision Refusing Bail]; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on Gbao Application to Exclude Evidence of Mr. Koker (TC), 23 May 2005, paras 4-6 [*Gbao* Ruling on Koker Evidence].

1.3. The Privilege against Self-Incrimination and Testimony of the Accused

476. The Chamber took cognisance of the fact that Article 17(4)(g) of the Statute of the Special Court guarantees to every person charged with a crime or crimes falling within the jurisdiction of the Court, the right not to incriminate himself. Guided by this statutory provision, and recalling that in the course of this trial, the Accused Gbao did not testify but chose to remain silent, the Chamber drew no adverse inferences from nor did it comment on his decision. Furthermore, and in conformity with general principles of law recognised by the community of nations, we recognised the due process rights of the Accused Gbao, acknowledging that his decision to remain silent did not amount to an admission of guilt.

477. Sesay and Kallon, however, chose to testify, and in accordance with Rule 85(C), gave evidence and thereafter, called witnesses in their defence. The fact that they elected to testify is not indicative that either of the Accused accepted an evidential burden to prove his innocence, or that a choice had to be made between the evidence of the Accused or the evidence of the Prosecution. Rather, the burden remained on the Prosecution to establish all essential elements of the crimes charged in the Indictment.[905]

1.4. A Reasoned Opinion in Writing

478. Pursuant to Article 18 of the Statute, every Accused has the right to a public judgement accompanied by a written reasoned opinion. Although in a case of this magnitude and complexity, a written reasoned opinion will necessarily be lengthy and complex, it is important that it is comprehensible to the public at large. Bearing this in mind, we recognise that cogency, coherency and conciseness are important qualities that the Chamber has endeavoured to employ. We have sought to make clear our reasons for finding evidence to be credible, as well as, and more importantly, which evidence we have relied upon to arrive at our Legal Findings. The Chamber recalls the guidance given by the ICTY Appeals Chamber on this issue:

> With regard to the factual findings, the Trial Chamber is required only to make findings of those facts which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the trial record. It is to be presumed that the Trial

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[904] *See*, for example, *Blaskic* Trial Judgement, para. 34: "The principle [...] is one of extensive admissibility of evidence – questions of credibility or authenticity being determined according to the weight given to each of the materials by the Judges at the appropriate time."

[905] *Limaj et al.* Trial Judgment, para. 22; *Vasiljevic* Trial Judgment, para. 13.

> Chamber evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence.[906]

479. In making its Factual Findings, the Chamber has opted to present them as a comprehensible narrative. In taking this approach, the Chamber has not commented on its evaluation of every piece of evidence on the record. The facts that are included in the narrative are *only* those facts which the Chamber has found to be established. Furthermore, it includes *only* those established facts that have been seriously considered by the Chamber in determining whether or not, an Accused bears responsibility for the charges against him.

480. Some of the evidence in this case was not useful to the Chamber in determining the liability of the Accused. Throughout this trial, the Chamber took a flexible approach on the issue of admissibility of evidence. We consistently held that the threshold for admissibility was low, with relevance being the primary criterion for determining admissibility.[907] The Chamber took the view that it would determine the probative value of each piece of evidence at the end of the case, in light of the evidence as a whole.[908] As we allowed the Parties broad discretion in adducing evidence, we have found that certain evidence was not useful in determining the liability of the Accused. In particular, the Chamber has not included in the narratives, admissible and relevant evidence of crimes which were not proven to have occurred within the timeframe pleaded for each District under each Count in the Indictment, or which were outside the geographic scope of the Indictment, as the Accused cannot be found criminally responsible for these acts.[909]

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[906] *Kvocka et al.* Appeal Judgement, para. 23 [original footnotes omitted].

[907] *See Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Kallon Motion to Exclude Evidence Outside the Scope of the Indictment, 26 June 2008, para. 9 [*Kallon* Decision on Exclusion Motion]; *CDF* Decision on Admission of Certain Evidence, p. 3; *Gbao* Ruling on Koker Evidence, para. 6. Where the Chamber considers that the prejudicial effect of evidence so outweighs its probative value that "admitting the evidence will impact adversely and unfairly on the integrity of the proceedings before the Court," the Chamber may exclude such evidence under Rule 95 (*Gbao* Ruling on Koker Evidence, para. 8; *Kallon* Decision on Exclusion Motion, para. 9). *See also Fofana* Appeal Decision Refusing Bail, para. 24. On the issue of flexible approach to the admissibility of evidence, *see Blaskic* Trial Judgement, para. 34.

[908] *Kallon* Decision on Exclusion Motion, para. 10; Decision on Witness TF1-108, para. 9; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04015-T, Ruling on Application for the Exclusion of Certain Supplemental Statements of Witness TF1-361 and Witness TF1-122, 1 June 2005, para. 18; *Gbao* Ruling on Koker Evidence, para. 9; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Admission of Command Structure Chart as an Exhibit (TC), 4 February 2005, para. 23. *See also Fofana* Appeal Decision Refusing Bail, para. 23.

[909] *Supra* para. 340.

481. In adopting this narrative approach, the Chamber has attempted to give as clear a picture as possible of the involvement of the Accused in the crimes for which they are charged, and the context in which the relevant actions took place.

482. Although it is not recounted in the narratives for each crime-base District, the Chamber has considered the whole of the evidence in relation to the proof of the chapeau requirements for the charges of crimes against humanity[910] and in relation to the proof of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute, where it has been in the interests of justice to do so.[911] Similarly, the Chamber has considered all of the evidence which tends to prove or disprove the existence of a joint criminal enterprise; command and control; *de facto* authority over a subordinate; the intention of the Accused; or evidence tending to prove beyond reasonable doubt that a crime was committed where relevant events occur outside the timeframes or geographical areas in the Indictment.[912] The Chamber considered all of the evidence which provides relevant background or contextual information which was found to be useful in understanding the conflict.[913] In arriving at our findings on these issues, the Chamber has relied upon only that evidence which was found to be credible and which we have accepted.

483. The Appeals Chamber has confirmed that:

> While it is preferable for the Trial Chamber to state its reasons for accepting the evidence of one witness over that of another when they are contradictory, the Trial Chamber is not obliged to refer to every piece of evidence on the trial record. Rather, it may only make findings of material facts that are essential to the determination of guilt in relation to a particular count.[914]

484. The ICTY Appeals Chamber also gave useful guidance in determining the level of detail required of a Trial Chamber in its written reasoned opinion regarding how the Trial Judges exercised their discretion to determine that testimony which they find credible, and that

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[910] Statute, Art. 2. *See Brdjanin* Trial Judgement, para. 397.
[911] Rules, Rule 93. Such evidence must have been disclosed to the Accused under Rule 66. *See Kvocka et al.* Trial Judgement, para. 652
[912] *See* argument in *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Prosecution Final Trial Brief, 29 July 2008, para. 77 [Prosecution Final Trial Brief]. *See Tolimir* Form of Indictment Decision, para. 47; *Kallon* Decision on Exclusion Motion, paras 10-12. *See also AFRC* Trial Judgement, para. 37.
[913] *Kallon* Decision on Exclusion Motion, paras 10-12; *AFRC* Trial Judgement, para. 37.
[914] *AFRC* Appeal Judgement, para. 268, citing *Kordic and Cerkez* Appeal Judgement para. 382, *Kupreskic et al.* Appeal Judgement, para. 39 and *Celebici* Appeal Judgement, para. 498.

which they do not:

> Considering the fact that minor inconsistencies commonly occur in witness testimony without rendering it unreliable, it is within the discretion of the Trial Chamber to evaluate it and to consider whether the evidence as a whole is credible, without explaining its decision in every detail. If the Trial Chamber did not refer to the evidence given by a witness, even if it is contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings.[915]

485. Adopting this approach, it should be understood that where the Chamber has not discussed the evidence of witnesses who gave testimony at variance with that found as established in the factual narrative, the Chamber has nevertheless fully considered the evidence of each and every witness in light of the evidence of the case as a whole. The Chamber has however determined that such evidence does not meet the threshold of reliability and credibility necessary to draw a factual conclusion upon it.

2. Evidence of Witnesses

2.1. Credibility and Reliability of Oral Testimony

486. In assessing the credibility and reliability of oral witness testimony, the Chamber has considered factors such as the internal consistency of the witnesses' testimony, its consistency with other evidence in the case; any personal interest witnesses may have that may influence their motivation to tell the truth; and observational criteria such as the witnesses' demeanour, conduct and character.[916] In addition, the Trial Chamber has considered the witnesses' knowledge of the facts on which they testify and the lapse of time between the events and the testimony.[917]

487. The Trial Chamber has also kept in mind that "the fact that a witness gives evidence honestly is not in itself sufficient to establish the reliability of that evidence. The issue is not merely whether the evidence of a witness is honest; it is also whether the evidence is objectively

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[915] *Kvocka et al.* Appeal Judgement, para. 23 [original footnotes omitted].
[916] *Blagojevic and Jokic* Trial Judgement, para. 23.
[917] *Halilovic* Trial Judgement, para. 17; *Blagojevic and Jokic* Trial Judgement, para. 23.

reliable."[918]

488. The Chamber may accept or reject the evidence of a witness in whole or in part, and may find a witness to be credible and reliable about certain aspects of their testimony and not credible or reliable with respect to others.[919]

2.2. Inconsistencies

489. The Chamber is of the view that the "mere existence of inconsistencies in the testimony of a witness does not undermine the witness's credibility."[920] The Chamber accepts that since the events in question took place many years ago, some details may be confused and some may be forgotten. The Chamber may accept such evidence as long as the witnesses have "nevertheless recounted the essence of an incident charged in acceptable detail, without undermining the fundamental features of their evidence."[921] Where there are material inconsistencies in the evidence of a witness, the Chamber has taken great care to address those issues and to assess, in light of all of the evidence, whether or not to rely on competing accounts of pertinent events.[922]

490. The Chamber is of the view that while inconsistency is certainly a factor to take into consideration when relying on evidence, this alone does not mean that the whole of the witness's testimony is unreliable.[923] Even if some aspects of a witness's testimony are not believed by the Chamber, the Chamber may still accept other portions of the evidence presented provided they are credible in their context and particularly where they are corroborated.[924] Further, the Chamber is of the opinion that where a witness' explanation is insufficient to place reliance on that witness' testimony, "[d]oubts about a testimony can be removed with the corroboration of other testimonies."[925]

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[918] *Brdjanin* Trial Judgement, para. 25, citing, *inter alia*, *Celebici* Appeal Judgement, paras 491, 506.
[919] *Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-A, Judgement (AC), 23 October 2001, para. 333 [*Kupreskic et al.* Appeal Judgement].
[920] AFRC Appeal Judgement, para. 120.
[921] *Haradinaj et al.* Trial Judgement, para. 13, referring to *Celebici* Appeal Judgement, paras 484-485, 496-498 and *Kupreskic et al.* Appeal Judgement, para. 31.
[922] *See* AFRC Appeal Judgement, para. 121; *Kupreskic* Appeal Judgement, para. 157.
[923] *Celebici* Appeal Judgement, para. 496.
[924] *Naletilic and Martinovic* Appeal Judgement, para. 441; *Kupreskic et al.* Appeal Judgement, para. 332.
[925] *Kayishema and Ruzindana* Trial Judgement, para. 80.

491. As a Chamber, our preference has been for oral testimony.[926] In this regard, we are mindful of the fact that it is not expected that a witness's oral evidence will be identical to evidence given in prior statements. As we have stated, "it is foreseeable that witnesses, by the very nature of oral testimony, will expand on matters mentioned in their witness statements, particularly during investigations and respond more comprehensively to questions asked at trial."[927] A witness may be asked questions at trial which were not put to him before and many witnesses subsequently remember in court and in the course of their narration, details which they had previously forgotten. As such, minor inconsistencies in testimony do not necessarily discredit a witness. The events in question took place several years ago and, due to the nature of the memory and its failures at times, some details will be confused and some others will be forgotten.

2.3. Identification Evidence

492. It is generally accepted that identification evidence is affected by the vagaries of human perception and recollection. Its probative value depends not only on the credibility of the witness, but also on other circumstances surrounding the identification. In assessing the reliability of identification evidence, the Chamber considered "the circumstances in which each witness claimed to have observed the Accused, the length of that observation, the familiarity of a witness with the Accused prior to the identification and the description given by the witness of their identification of the Accused."[928] The Chamber is mindful that the ICTY Appeals Chamber has drawn attention to the need for "extreme caution" in relation to visual identification evidence[929] and has highlighted that the evaluation of an individual witness's evidence, as well as the evidence as a whole, should be conducted with considerations in mind such as those enunciated by the English Court of Appeal in *R v. Turnbull*.[930]

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[926] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Ruling on Defence Evidentiary Objections Concerning Witness TF1-108 (TC), 15 June 2006, para. 8 [Decision on Witness TF1-108]; *Norman* Decision on Witness Statements and Cross-Examination, para. 25.

[927] *CDF* Decision on Disclosure of Witness Statements and Cross-Examinations, para. 25.

[928] *Vasiljevic* Trial Judgement, para. 16.

[929] *Kupreskic et al.* Appeal Judgement, paras 34-40 and footnoted references.

[930] *Kupreskic et al.* Appeal Judgement, paras 34-35, citing the English case of *R v. Turnbull* [1976] 63 Cr. App. R. 132, [1977] QB 224, 228-229. The considerations affecting the reliability of identification evidence identified by the Court of Appeal in *Turnbull* included the amount of time the witness observed the Accused, the distance between the witness and the Accused, the level of visibility, the presence of any impediments in the line of view, whether the witness had specific reasons to remember the Accused, whether the Accused was previously known to

493. During the course of the trial, some witnesses have been asked to identify one or more of the Accused in the courtroom. The Chamber is aware that it may be possible for a witness to point out an Accused person due to their physical placement in the courtroom and, in a multi-Accused trial, to pick out the Accused person who most closely resembles an individual they previously saw.[931]

494. The Chamber considers identification by a witness of someone previously known to be more reliable than identification of someone previously unknown.[932]

2.4. Hearsay Evidence

495. The Chamber followed the operative principle in the sphere of international criminal adjudication that hearsay evidence is admissible.[933] The Chamber is aware that hearsay evidence has inherent deficiencies. It cannot be tested by cross-examination, its reliability may be affected by compounded errors of perception and memory, its source and content can neither be confirmed nor is it subject to solemn declaration.[934] We are conscious of the fact that where such evidence is admitted to prove the truth of its contents, a tribunal ought to be satisfied that it is reliable for that purpose, in the sense of its being voluntary, truthful, and trustworthy, and that both its context and the circumstances under which it arose should be considered.[935]

496. Consistent with the Statute, the Rules of Procedure and Evidence and established international criminal jurisprudence, we acknowledge the fact that evidence which is hearsay in character does not necessarily deprive it of its probative value. In general, however, the weight or the probative value to be attached to such evidence will usually be less than that attributed

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the witness, the time lapse between the original observation and the subsequent identification to the authorities, and any discrepancies between the original description given by the witness and the actual appearance of the Accused.

[931] *See Limaj et al.* Trial Judgement, para. 17; *Vasiljevic* Trial Judgement, para. 19. *See also Kunarac et al.* Trial Judgement, para. 562.

[932] *Kayishema and Ruzindana* Trial Judgement, paras 455-458.

[933] *Fofana* Appeal Decision Refusing Bail, para. 29. See also *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence (AC), 16 February 1999, para. 14. [*Aleksovski* Appeal Decision on Admissibility of Evidence]

[934] *Krnojelac* Trial Judgement, para. 70. See also *Aleksovski* Appeal Decision on Admissibility of Evidence, para. 15.

[935] May and Wierda, *International Criminal Evidence*, p. 117.

to the testimony under oath of a witness who has been subjected to cross-examination.[936] Factors that influence the probative value of hearsay evidence include whether the evidence given was first-hand or further removed, the opportunity to cross-examine the person who made the statement, the potential for errors of perception and memory and the circumstantial guarantees of trustworthiness surrounding the statements.[937]

2.5. Accomplice Evidence

497. The Chamber has heard considerable evidence from "insider witnesses" – that is, persons who were former members of the RUF or the AFRC and who, even though they were not, could also have been indicted for these same offences whose commission they themselves openly and voluntarily admitted in the course of their testimony. These witnesses, as the Appeals Chamber has also observed, are, in law, considered as accomplices.[938]

498. The Chamber has approached the assessment of the reliability of the evidence of accomplice witnesses with caution and has always considered whether or not an accomplice has an ulterior motive to testify such as assurances of *a quid pro quo* from the Prosecution that they will not be prosecuted. Where possible, the Chamber has looked for corroboration of the evidence of accomplice witnesses.[939]

2.6. Circumstantial Evidence

499. Circumstantial evidence is evidence of circumstances surrounding an event or incident from which a fact at issue may be reasonably inferred.[940] Although the individual ingredients of circumstantial evidence may be insufficient to establish a fact, taken conjunctively and cumulatively their effect may be revealing and sometimes decisive.[941] As a matter of law, where

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[936] See *Prosecutor v. Blaskic*, IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability (TC), 21 January 1998, para. 12.
[937] *See*, for example, *Prosecutor v. Delic*, IT-04-83-T, Judgement (TC), 15 September 2008, para. 27 [*Delic* Trial Judgement]; *Haradinaj et al.* Trial Judgement, para. 19.
[938] *AFRC* Appeal Judgement, para. 127.
[939] *AFRC* Appeal Judgement, paras 128-129. *See also Muvunyi* Appeal Judgement, para. 98 [*Niyitegeka* Appeal Judgement].
[940] *Halilovic* Trial Judgement, para. 15. *See also Limaj et al.* Trial Judgement, para. 10.
[941] *See R. v. Exall* (1866), 4 F. & F. 922 (England), p. 928: "Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a conclusion of guilt, that is, with as much certainty as human

the Prosecution's case is substantially based on circumstantial evidence, it must be such as to satisfy the Chamber that it is consistent only with the guilt of the Accused and that there is no reasonable innocent explanation.[942] Where it has been necessary for the Chamber to resort to circumstantial evidence in proof of a fact in issue, the Chamber has been careful to consider whether any conclusion other than the guilt of the Accused can reasonably be reached. If such a conclusion is possible, the Chamber has not relied on the evidence for the purpose of convicting the Accused.[943]

2.7. Corroboration

500. In some instances, only one witness has given evidence on a material fact. While the testimony of a single witness on a material fact does not, as a matter of law, require corroboration,[944] it has been the practice of the Chamber to examine evidence from a lone witness very carefully, in light of the overall evidence adduced, and to guard against the exercise of an underlying motive on the part of the witness, before placing any reliance upon it.[945]

501. The Chamber is mindful of the Appeals Chamber's opinion that the Trial Chamber may rely on "a limited number of witnesses or even a single witness provided that it took into consideration all the evidence on the record."[946]

2.8. Alibi

502. In the course of these proceedings, the Second Accused, Kallon, raised alibis and adduced evidence to support his claims in relation to certain events and allegations set out in the Indictment. In raising the special defence of alibi, an Accused not only denies that he committed the crimes charged, but also asserts that he was present in a different location than

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affairs can require or admit of." *See also* Peter Murphy, *Murphy on Evidence*, 10th ed., (Oxford: Oxford University Press, 2008), p. 20-21 [Murphy, *On Evidence*].

[942] *See McGreevy v. Director of Public Prosecutions* [1973] 1 All ER 503, 1 WLR 276; Murphy, *On Evidence*, p. 22-23.

[943] *CDF* Appeal Judgement, para. 200; *Celebici* Appeal Judgement, para. 458: "A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him [...] Such a conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from that evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted." [emphasis in original].

[944] *AFRC* Appeal Judgment, para. 129. *See also Aleksovski* Appeal Judgement, para. 62.

[945] *CDF* Appeal Judgement, para. 199. *See also Kordic and Cerkez* Appeal Judgement, para. 274.

the location where the crimes were committed.[947] By introducing an alibi, "the defendant does no more than require the Prosecution to eliminate the reasonable possibility that the alibi is true."[948] Thus, if the alibi is "reasonably possibly true, it must be successful."[949] It is, however, settled law that where the Accused has raised an alibi, the evidentiary, although not the persuasive, burden rests upon him. The implication is that he must lay an evidential foundation, on a balance of probabilities, for the defence to merit any consideration.[950] It is not sufficient to merely assert that he was not at the scene where the crime was committed.

503. This does not shift the burden placed on the Prosecution. The "burden of proving the crimes charged beyond reasonable doubt, remains squarely on the shoulders of the Prosecution."[951] The Prosecution must therefore not only rebut the validity of the alibi but also establish the guilt of the accused beyond reasonable doubt.[952]

2.9. Measures to Protect Witnesses

504. The Chamber considered concerns for the safety of certain witnesses and their families and accordingly granted protective measures to them, including anonymity during trial.[953] To preserve that anonymity in this Judgement, these witnesses are referred to only by the pseudonym under which they testified.

505. Occasionally, it is also possible to identify a protected witness by the events or knowledge to which they testified. In order to safeguard the identities and anonymity of these

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[946] *AFRC* Appeal Judgement, para. 147.
[947] *Niyitegeka* Appeal Judgement, para. 61.
[948] *Celebici* Appeal Judgment, para. 581.
[949] *Prosecutor v. Musema*, ICTR 96-13-A, Judgment (AC), 16 November 2001, paras 205-206 [*Musema* Appeal Judgement], citing with approval *Musema* Trial Judgement para. 108.
[950] *Prosecutor v. Limaj, Balia and Musliu*, IT-03-66-A, Judgment (AC), 27 September 2007, paras 63-64 [*Limaj et al.* Appeal Judgement].
[951] *Niyitegeka* Appeal Judgement, para. 60. *See also Prosecutor v. Kajelijeli*, ICTR 98-44-A-A, Judgment (AC), 23 May 2005, para. 42 [*Kajelijeli* Appeal Judgement].
[952] *Niyitegeka* Appeal Judgement, para. 61, citing with approval *Niyitegeka* Trial Judgement, para. 52.
[953] *See Prosecutor v. Fofana*, SCSL-03-11-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 16 October 2003; *Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and urgent Request for Interim Measures until Appropriate Protective Measures are in Place (TC), 10 October 2003; *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 23 May 2003. See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses (TC), 8 June 2004.

protected witnesses to the extent possible, some evidence has been presented in a general way.

2.10. Names and Spellings of Locations

506. The Chamber recalls, as per its Rule 98 Decision of 25 October 2006, that towns, cities or villages that have similar names but different spellings or pronunciation from witness to witness, may refer to the same location. Specifically, the Chamber is of the considered view that "the spellings of a town's name could differ, depending on a number of circumstances, such as the witness's area of provenience, the pronunciation or the subsequent interpretation in Court."[954] Considering the circumstances existing in the evidence, the Chamber has accepted that the names of locations mentioned by witnesses which are similar but not identical, often refer to the same location. Instances of alternate spellings of locations that are accepted by the Chamber will be addressed in the Factual Findings.

507. It also worth noting that the capital in each District is most frequently a town bearing the same name as the District itself. For this reason, references to a District within this Judgement indicate the full name of the District.

2.11. Nicknames

508. The Chamber notes that many of the fighters in the different armed groups had nicknames. Many of these nicknames became notorious, and some fighters were known only by their nicknames. When discussing the actors involved, the Chamber has taken note and made use of the name most commonly associated with that particular individual, whether it be the person's nickname or their actual name.

2.12. Timeframes

509. Various witnesses testified about events occurring during broad time periods, such as "the rainy season", "the dry season", or "the mango season." The Prosecution could have made an application, pursuant to Rule 94, for the Chamber to take judicial notice of the dates of these respective seasons, which would have allowed the other parties the opportunity to respond. As the Prosecution did not make such an application, the Chamber is of the view that

[954] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 11.

it would not be appropriate for it to take judicial notice of the dates of these seasons *proprio motu*.

510. However, where reliable evidence has been adduced about the dates of a particular season such as the rainy season or the mango season in a particular district, the Chamber has considered this evidence in determining the timing of certain events that occurred during that season. For instance, TF1-304 testified that the mango season in Kono District was from April until June,[955] which the Chamber relied on in establishing the timing of certain events in Kono District described by TF1-263 as occurring during that season.[956] According to TF1-108, the rainy season in Kailahun District was June, July, August and September.[957]

2.13. Expert Evidence

511. During the course of trial, the Chamber ruled that an expert witness is a "person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute"[958] and that expert testimony is "testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field" whose purpose "is to provide a Court with information that is outside its ordinary experience and knowledge."[959]

512. In this trial, the Chamber admitted testimony from expert witnesses for both the Prosecution and the Defence even though this does not mean that the Chamber is bound to accept it. It is the prerogative of the Chamber to decide what probative value to attach to it.[960] In evaluating the probative value of this evidence, the Chamber has considered the professional competence of the expert, the methodologies and reasoning used by the expert, the independence of the expert, whether those facts upon which the expert opinion is based have

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[955] Transcript of 13 January 2005, TF1-304, pp. 50-51.
[956] Transcript of 6 April 2005, TF1-263, pp. 5-9.
[957] Transcript of 10 March 2006, TF1-108, p. 30 (CS).
[958] *Prosecutor v. Galic*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps (TC), 3 July 2002, p. 2, cited in *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures (TC), 21 June 2005, p. 4 [*CDF* Decision on Calling Additional Witnesses].
[959] May and Wierda, *International Criminal Evidence*, p. 199, cited in *CDF* Decision on Calling Additional Witnesses, p. 4. *See also Prosecutor v. Akayesu*, ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness (TC), 9 March 1998.

been introduced into evidence, the truthfulness of those facts, and the credibility of the opinions expressed in light of these factors and other evidence accepted by the Chamber.[961]

3. Documentary Evidence

513. Pursuant to the Rules, the Chamber may admit documentary evidence.[962] During the course of trial, the Chamber admitted documentary evidence from both Prosecution and Defence teams. As with all evidence adduced before the Trial Chamber, "the weight and reliability of such 'information' admitted under Rule 92*bis* will have to be assessed in light of all the evidence in the case."[963] The Chamber will not make use of the evidence admitted under this rule, where it goes to prove the acts and conduct charged against the Accused if there is no opportunity for cross-examination.[964]

514. With this flexible approach to the admission of evidence, there is less scope for the restrictive application of technical rules of evidence sometimes found in national jurisdictions and applied to documentary evidence.[965] However, when admitting documentary evidence during the course of this trial, we repeatedly indicated that despite the flexibility of the Chamber's approach to the admissibility issue, the reliability of such documentary evidence was not thereby automatically established and that it would be one of the factors to be considered

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[960] *See Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1, Decision on Prosecution's Motion for Exclusion of Evidence and Limitation of Testimony (TC), 3 July 2000, para. 4.

[961] *See Vasiljevic* Trial Judgement, para. 20.

[962] Rules 89(C), 92*bis* and 92*ter*. Rule 92*bis* was amended on 14 May 2007. Rule 92*ter* was adopted on 24 November 2006.

[963] *CDF* Appeal Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, para. 27.

[964] *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92*bis* to Admit the Transcripts of Testimony of TF1-156 and TF1-179, 3 April 2006, p. 3; *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92*bis* to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169, 9 November 2005, p. 3; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92*bis* and 89 (C), 15 July 2005, pp. 3-4 [*CDF* Decision on Admission of Certain Evidence].

[965] As the Appeals Chamber has stated, "[t]he so-called "best evidence rule" [...] has no modern application other than to require a party in possession of the original document to produce it. If the original is unavailable then copies may be relied upon – the rule has no bearing at all on the question of whether an unsigned statement or submission is admissible. If relevant, then under Rule 89(C) they may [...] be admitted, with their weight to be determined thereafter. There is no rule that requires, as a precondition for admissibility, that relevant statements or submissions must be signed. That may be good practice, but it is not a rule about admissibility of evidence. Evidence is admissible once it is shown to be relevant: the question of its reliability is determined thereafter, and is not a condition for its admission." (*Fofana* Appeal Decision Refusing Bail, para. 24) [original footnotes omitted].

during the evaluation of the probative value of the totality of the evidence in the case.[966]

515. The Chamber opines that all exhibits were relied upon only for the purpose for which they were admitted. In the event where an exhibit was admitted only for a limited purpose, that exhibit was only used for the purpose for which it was admitted. For instance, Exhibits 20 and 21 were admitted solely for establishing prior inconsistent statements. The Chamber therefore used these exhibits for the sole purpose of assessing the credibility of TF1-071, and not for the truth of their contents.

516. Other specific exhibits the Chamber wishes to draw attention to are Exhibits 35 and 36, which are Salute Reports of the RUF allegedly written by Bockarie (Exhibit 35) and Sesay (Exhibit 36).[967] Witness TF1-360 identified the signatures on these documents as those of Sesay and Bockarie based on his past experience of their signatures. We believe him and are accordingly of the considered view that these two exhibits were written by Bockarie and Sesay respectively. The Chamber in arriving at this conclusion, has considered but rejected the objections by the Sesay Defence which argued that the witness was not an expert in hand-writing analysis and that a proper foundation was not laid by the Prosecution.[968]

517. The Chamber recalls its earlier Ruling on the Identification of Signatures by Witness TF1-360 where the Chamber held that the evidence of TF1-360 was admissible and that a "final determination of the relevance, reliability and probative value" of this evidence would be made at a later date.[969] The Chamber further notes that the Sesay Defence never called an expert witness to contest the fact that the signature on the report was Sesay's. In the light of all the evidence adduced at trial, the Chamber finds the exhibits relevant and probative. In sum, the Chamber accepts that Exhibits 35 and 36 were written by Bockarie and Sesay respectively, and has relied on them in making its findings.

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[966] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Notice Pursuant to Rule 92*bis* to Admit Information into Evidence, 2 August 2006, p. 4; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Identification of Signatures by Witness TF1-360, 14 October 2005 para. 8; *CDF* Decision on Admission of Certain Evidence, p. 4. *See* also *CDF* Appeal Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, para. 26.

[967] Exhibit 35, Salute Report from Major General Sam Bockarie, SCSL Registry p. 2358, 21 July 2005; Exhibit 36, Salute Report from Brigadier Issa Sesay, SCSL Registry p. 2344, 21 July 2005.

[968] Transcript of 21 July 2005, pp. 58-64 (CS).

[969] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL 04-15-T, Ruling on the Identification of Signatures By Witness TF1-360, 14 October 2005, para. 9.

518. The Chamber notes that it has accepted documentary evidence submitted pursuant to Rule 92*bis*. The Chamber has accepted and relied on various reports from non-governmental organisations ("NGOs"), as well as the United Nations. In particular, the UN Human Rights Reports and the "No Peace Without Justice" ("NPWJ") Report were found to be reliable and useful. The Chamber has used these reports in order to provide further understanding of the background to or context of the conflict, as well as to make general findings.

519. However, these reports, in and of themselves, are an insufficient basis upon which to ground a conviction.

4. Judicial Notice and Agreed Facts

520. The Chamber observes that Rule 94(A) of the Rules provides that the Chamber shall not require proof of facts of common knowledge but shall instead take judicial notice of them. In accordance with this provision, the Chamber took judicial notice of a number of facts.[970] Once judicial notice is taken, such facts cannot be challenged during trial.[971] Those facts that have been judicially noticed by this Chamber are, therefore, conclusively established.[972]

521. The Chamber observes that the Parties admitted a number of facts in this case. There is no provision in the Rules pertaining to agreed facts. Nonetheless, it follows from the nature of adversarial proceedings that the Parties may stipulate to any fact.[973] Before relying on such facts, the Trial Chamber has subjected them, as all other evidence, "to the tests of relevance, probative value and reliability".[974] Furthermore the Chamber notes that not all the Accused have agreed to the same facts. In such cases the Chamber will only rely on those facts agreed upon, if there is no prejudice to the other Accused.

5. Credibility Analysis

522. One hundred and seventy one witnesses testified before this Chamber over the course

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[970] See Annex D: Judicially Noticed Facts.
[971] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana - Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence" (AC), 16 May 2005, para. 32 [*CDF* Appeal Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence].
[972] *See* further, Consequential Order on Judicial Notice.
[973] *AFRC* Trial Judgement, para. 154.

of the RUF trial. Some of these witnesses are credible and the Chamber finds them to be genuinely seeking to assist in the search for the truth. Other witnesses are unreliable, having given materially inconsistent testimony or having displayed ulterior partisan motives for testifying. The Chamber has considered all of the evidence presented by both the Prosecution and the Defence, and hereby makes independent credibility determinations for the various witnesses. The Chamber does not intend to evaluate the credibility of every witness who testified at trial. However, the Chamber finds that certain important credibility findings necessitate further explanations.

5.1. Witness "Incentives"

523. The Defence has alleged that some of the Prosecution evidence is unreliable because the witnesses were provided with financial incentives to testify, or were aided in some other way such as their relocation to another country. This issue was raised in motions filed by the Defence, during the cross-examination of several witnesses and in their Final Trial Briefs.[975]

524. The Chamber recalls the "Practice Direction on Allowances for Witnesses and Expert Witnesses" issued by the Registrar on 16 July 2004, which permits witnesses testifying before the Court to receive financial remuneration.[976] Witnesses may receive compensation for a variety of expenses such as travel, a daily subsistence allowance, assistance in farm-related tasks, and accommodation and meals.[977] Pursuant to this Practice Direction, witnesses for both the Prosecution and Defence may receive fair compensation for the time spent assisting the Court.

525. The Practice Direction also requires the Witnesses and Victims Section ("WVS") and the Financial Office of the Special Court to supply each other with records of the

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[974] *Simic* Trial Judgement, para. 21; *Blagojevic* Trial Judgement, para. 28; *Halilovic* Trial Judgement, para. 20.

[975] *See*, for example, *Prosecutor v. Sesay, Kallon and Gbao*, SCSL 04-15-T, Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payment to Witnesses, 30 May 2008; *see also Prosecutor v. Sesay, Kallon and Gbao*, SCSL 04-15-T, Kallon Defence Response to Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payment to Witnesses, 3 June 2008; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL 04-15-T, Gbao-Notice of Support to Sesay Motion Requesting the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payment to Witnesses, 3 June 2008; Kallon Final Trial Brief, para. 10; Gbao Final Trial Brief, para. 505. *See also* Transcript of 19 April 2005, TF1-141, pp. 15, 71; Transcript of 6 July 2006, TF1-334, p. 49 (CS); Transcript of 5 October 2004, General John Tarnue, p. 164; Transcript of 6 October 2004, General John Tarnue, pp. 9-11 (CS); Sesay Final Trial Brief, para. 8; Kallon Final Trial Brief, paras 10, 185, 187-188, 362, 406, 407, 482; Gbao Final Trial Brief, paras 505, 933.

[976] Practice Direction on Allowances for Witnesses and Expert Witnesses, pp. 5-10.

remuneration provided.[978] Disclosure has been made of payments received by certain witnesses and the Chamber has examined such payments.[979] The Chamber is of the considered view that there is no evidence to justify the conclusion that witnesses came to testify due to the financial incentives paid by the Court nor does this, in any way, negate their credibility. The Chamber therefore draws no adverse inferences from the fact that witnesses received compensation, and does not consider such compensation relevant in assessing the credibility of any particular witness. Similarly, the fact that a witness has been relocated by the WVS in order to protect his safety or the safety of his family does not affect the Chamber's view of the evidence provided by that witness.

526. Accordingly, the Chamber draws no adverse inferences about the credibility of any witnesses called by either the Prosecution or the Defence based on any of the allowances provided to witnesses who testified before us.

5.2. Concerns about certain categories of Defence witnesses

527. Several Defence witnesses testified that given the position or rank they held at the time, if a crime had occurred in a particular area, it would have been reported to them or they "would have heard or known about it." They then concluded that since they had not heard about certain crimes, these crimes could not have "happened." Some frankly testified to their continued belief and commitment to the RUF ideology. DIS-129, for instance, testified that no woman was ever raped, harassed or went missing in Kulagbanda village because if that had happened, she would have been informed by virtue of the position she held in the RUF.[980] DMK-108 testified that when the RUF attacked Makeni no civilian property was taken or looted because he would have known if such lootings had occurred.[981]

528. The Chamber is of the view that it does not follow that a crime that did not occur merely because an individual says he did not hear of it or of the event. The Chamber attaches no weight whatsoever to this and similar evidence in making determinations about whether

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[977] Practice Direction on Allowances for Witnesses and Expert Witnesses, pp. 5-10.
[978] Practice Direction on Allowances for Witnesses and Expert Witnesses, p. 4.
[979] Exhibit 22, WVS Payments Made to TF1-263, 11 April 2005; Exhibit 105, WVS Allowances to TF1-367, 22 June 2006; Exhibit 121, WVS Allowances to TF1-334, 6 July 2006.
[980] Transcript of 13 March 2008, DIS-129, p. 15; Confidential Exhibits 305 and 306.
[981] Transcript of 29 April 2008, DMK-108, pp. 75-76.

crimes have been committed or not.

529. The Defence, and in particular, the Sesay Defence, also both called many witnesses who testified that areas controlled by the RUF were not subject to the full horrors of the war attested to by many other witnesses; that relationships between fighters and civilians were harmonious; and that living conditions in such areas were better than they were either before or after the war.

530. Witnesses in this category include, among others, DIS-069, DAG-048, DIS-188, DIS-164. These witnesses testified that the RUF provided free medical care and education in rebel-controlled zones.[982] They also testified that civilians worked willingly on community farms and in mines,[983] were well-taken care of, and went to the fields singing and dancing.[984] Others testified that civilians were allowed to keep some of the proceeds of the community farming/mining,[985] and were able to farm for themselves.[986] Such witnesses presented an account of the RUF-controlled areas in which the fighters and civilians lived harmoniously with one another; there was no ill-treatment of civilians; and any instances of wrongdoing by the rebels were immediately rectified.[987] Finally, such witnesses testified that they were happy working on Sesay's farm, and that he had personally assisted them by giving them Maggi, salt, food or cigarettes.[988]

531. The Chamber recognizes that there may have been a limited few privileged people who had access to such amenities. The Chamber is of the considered view that the overwhelming evidence presented during the trial contradicts this reality for most civilians in RUF controlled

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[982] Transcript of 30 October 2007, DIS-188, p. 38 (CS), Transcript of 13 November 2007, DIS-281, p. 14 (CS), Transcript of 22 January 2008, DIS-164, p. 75 (CS).
[983] Transcript of 3 June 2008, DAG-048, p. 119. Transcript of 29 February 2008, DIS-089, p. 58. Transcript of 2 June 2008, DAG-110, p. 90.
[984] Transcript of 18 October 2007, DIS-178, pp. 70-71.
[985] Transcript of 3 June 2008, DAG-048, p. 119; Transcript of 29 February 2008, DIS-089, p. 58; Transcript of 2 June 2008, DAG-110, p. 90; Transcript of 22 October 2007, DIS-069, pp. 86, 90; Transcript of 25 October 2007, DIS-069, p. 24; Transcript of 22 November 2007, DIS-124, pp. 126-127; Transcript of 13 November 2007, DIS-293, p. 55; Transcript of 22 October 2007, DIS-069, p. 90; Transcript of 5 November 2007, DIS-149, p. 74.
[986] Transcript of 18 October 2007, DIS-178, pp. 70-71.
[987] Transcript of 4 October 2007, DIS-074, p. 26; Transcript of 6 March 2008, DIS-310, pp. 46-47.
[988] Transcript of 4 October 2007, DIS-177, p. 102; Transcript of 5 October 2007, DIS-080, pp. 93, 96; Transcript of 4 October 2007, DIS-074, p. 54.

areas of Sierra Leone during the war.[989] The Chamber observes that the majority of these witnesses testified that they were adherents of the RUF ideology.[990] Some of these witnesses testified out of loyalty to the RUF and their superior Commanders, and evidently were trying to assist Sesay and Kallon in this trial, and not necessarily to assist the Chamber in its search for the truth. Accordingly, the Chamber has rejected the version of events presented by these witnesses because their testimony to this effect, in the circumstances, is not credible.

5.3. Victim Witnesses

532. Numerous witnesses testified before the court and gave personal accounts of suffering brutal and violent crimes such as amputations or rapes, or had personally witnessed crimes such as amputations, rapes and killings committed against relatives and friends. The re-telling of such traumatic experiences was difficult for many of the witnesses, some of whom became understandably emotional and distraught during testimony. The Chamber recognizes that, as an obvious consequence of recounting such horrifying events, some witnesses were unable to give the Chamber a full account of what they had endured, either because it was too painful, or because they had mentally repressed the event. Other witnesses, while able to remember the event, had difficulties in recalling all of the details in full.

533. The Chamber recognizes that victims of intense and serious physical and mental trauma may often be unable to remember every detail of their experience. Minor inconsistencies, such as errors in naming the precise village or town in which the event occurred, or the Commander in charge of the rebels, were fairly common among victim witnesses. For instance, TF1-253 testified about an attack on his village in Manaarma, located in Port Loko District.[991] During his testimony, the witness mistakenly identified George Johnson as commanding rebels under the control of Superman.[992] These witnesses were in the midst of horrific experiences, and these slight inconsistencies are therefore to be expected. The Chamber also recognizes that the details of the RUF command structure may escape a

[989] *See*, for example, Exhibit 30, MSF 1998 Report: Atrocities Against Civilians in Sierra Leone, SCSL Registry pp. 4356-4360, 5 July 2005 [MSF 1998 Report]; Exhibit 146, HRW We'll Kill You if you Cry; Sexual Violence in the Sierra Leone Conflict, 27 June 2006; Exhibit 174, HRW June 1999, SCSL Registry p. 19375, 2 August 2006; Exhibit 175, HRW Report July 1998, SCSL Registry p. 19437, 2 August 2007.

[990] *See*, for example, Transcript of 19 October 2007, DIS-069, p. 50 (CS); Transcript of 22 January 2008, DIS-164, p. 75 (CS).

[991] Transcript of 28 July 2004, TF1-253, pp. 7-42.

particular witness, especially when taking into account its non-formal and guerrilla nature.

534. Moreover, in addition to the traumatic events these witnesses experienced, there was often a large lapse in time between the event in question and the witness' recounting of the event both during the pre-trial phase and at trial.

535. While the Chamber has not accepted inaccurate evidence about the location of a crime, or evidence about the commission of a crime by a particular Commander, the Chamber has generally accepted the testimony of such witnesses for the purpose of establishing that crimes took place. It is the considered view of the Chamber that minor discrepancies in the testimony of such witnesses do not affect their credibility.

536. In general, the Chamber is of the view that the testimony of victim witnesses was credible, especially as the testimony relates to personal accounts of witnesses experiencing the crimes charged. These witnesses usually had no ulterior motive in testifying and their evidence consisted primarily of describing criminal activity. While the testimony of these witnesses was certainly not without discrepancies or inconsistencies, the Chamber does not, for the most part, consider these to be material. Accordingly, the Chamber has largely accepted the testimony of victim witnesses as being credible and reliable.

5.4. Expert Witnesses

537. The Chamber heard the testimony of several experts, both for the Prosecution and the Defence. The Chamber recalls its previous discussion of the factors it has considered when evaluating expert evidence, which include the methodology used, the independence of the expert and his credibility. The Chamber notes that its determination of testimony of expert witnesses was more a question of the weight to be accorded to such evidence.

538. For instance, the Chamber recalls that it gave *prima facie* acceptance to TF1-369's qualifications as an expert during the trial. However, this acceptance only addressed the admissibility of such testimony and not its weight.[993] In evaluating TF1-369's testimony about 'forced marriage,' the Chamber did not accept her evidence when she provided legal opinions.

[992] Transcript of 28 July 2004, TF1-253, p. 42.
[993] Transcript of 25 July 2006, TF1-369, pp. 7-8, 12.

The Chamber also accepted Johan Hederstadt as a *prima facie* expert on guerrilla warfare, and allowed his testimony within his specialization.[994] However, the Chamber only accepted the report to the extent that it fell within his knowledge as an expert, and excluded evidence from it with regard to many of his conclusions.[995] Generally speaking however, the Chamber views the evidence of these and other expert witnesses as credible and has accepted the evidence of such experts insofar as it relates to their areas of expertise, and does not make conclusions on the acts and conduct of the Accused Persons.

5.5. Insider Witnesses

539. Numerous "insider witnesses" were called by both the Prosecution and the Defence. The Chamber specifically recalls the testimony of TF1-371, TF1-366, TF1-361, TF1-367, TF1-362, TF1-360, TF1-071, George Johnson, TF1-334, TF1-036, TF1-045, DIS-069, DIS-188, DIS-157 and others. These insider witnesses were themselves high-ranking officers in the RUF or AFRC. Many of these witnesses were key participants in the crimes alleged in the Indictment, and may be considered to be co-perpetrators or accomplices. The Chamber reiterates that the Appeals Chamber has clarified that such persons may be considered accomplices even if they have not been charged with any criminal offence.[996]

540. The Chamber recalls its previous discussion about insider witnesses and the nature of their evidence, and emphasises that the trier of fact must exhibit extreme caution when examining the credibility of accomplice evidence. When possible, the Chamber has sought corroboration of the evidence of insider witnesses, and in particular, when this evidence related to a material issue. Being so aware, the Chamber has cautioned itself on the risk and danger of accepting uncorroborated evidence from an insider witness as credible, but at the same time, acknowledges its authority to accept such evidence. Without seeking to examine all of them, the following paragraphs provide a brief discussion on the credibility of a few of the insider witnesses for both the Prosecution and the Defence.

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[994] Transcript of 23 June 2008, pp. 11, 16.
[995] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Admissibility of Certain Parts of Expert Report of Johan Hederstadt, 29 July 2008, paras 26-39.
[996] *AFRC* Appeal Judgement, para. 127.

5.5.1. Prosecution Witnesses

5.5.1.1. TF1-371

541. TF1-371 was a high-ranking member of the RUF.[997] This witness testified extensively on training, the inner workings of the Junta Government, forced labour and serious crimes.

542. All three Defence Counsel have raised credibility concerns with respect to this witness. The Sesay Defence claimed TF1-371 changed his story several times, contradicted himself with respect to the diamond mining programme of the RUF and AFRC, and inaccurately implicated Sesay.[998] The Kallon Defence asserted that TF1-371 was a very high-ranking RUF officer by 1996 who has repeatedly minimized his own role and exaggerated that of the Accused. The Kallon Defence submitted that this witness was unreliable.[999] The Gbao Defence argued the testimony of TF1-371 had been significantly undermined due to the Prosecution's promise of immunity in exchange for testimony.[1000]

543. The Chamber has duly noted the credibility concerns surrounding the testimony of TF1-371 raised by all three Defence Counsel, and has approached the testimony of TF1-371 with utmost caution. The Chamber has observed that TF1-371 at times has a tendency to implicate the Accused in a way that does not accord with the rest of the evidence. For instance, the Chamber has serious concerns about the veracity of TF1-371's testimony as it relates to the command structure of the RUF and the AFRC, the role of the Accused within the RUF movement as well as evidence which relates to the acts and conduct of the Accused. The Chamber has required corroboration before accepting his evidence relating to these issues. However, where the evidence of TF1-371 was more general in nature, the Chamber has accepted his evidence without corroboration, as it has found it to be consistent with the overall evidence and reliable. We found this witness to be very articulate, and able to give his testimony in a clear-headed and coherent way.

5.5.1.2. TF1-366

544. TF1-366 testified that he was captured as a child by the RUF in Kailahun District in

[997] For reasons of Protective Measures, the Chamber will not elaborately get into the personal details of TF1-371.
[998] Sesay Final Trial Brief, para. 651.
[999] Kallon Final Trial Brief, para. 298.
[1000] Gbao Final Trial Brief, para. 279.

1991 and taken to Baiwala base camp to be trained.[1001] This witness remained in the RUF for the duration of the war, eventually reaching the rank of Colonel. TF1-366 fought for the RUF and personally participated in many attacks and missions.[1002]

545. The Sesay Defence objected to the testimony of TF1-366 in part, because it claimed the witness attempted to implicate Sesay at every opportunity, and was generally an unreliable witness.[1003] The Chamber notes that the Sesay Defence also filed a Motion to Direct the Prosecutor to Investigate the Matter of False Testimony of TF1-366.[1004] The Kallon Defence asserted that TF1-366 was unreliable, contradicted himself and exhibited a "solemn" disregard for the truth.[1005] The Gbao Defence had similar concerns, stating that much of the evidence of TF1-366 was "so utterly inconsistent it caused one to wonder whether he was making it up as he went along."[1006]

546. The Chamber shares the concerns of Defence Counsel for the Accused that the testimony of TF1-366 was often problematic. The testimony of this witness tended to over-implicate the Accused, particularly Sesay and Kallon, in a way that went beyond the general story as related by other witnesses. The Chamber has therefore been cautious, and has not accepted the testimony of TF1-366 as it relates to the acts and conduct of the Accused unless it was corroborated in some material aspect by a reliable witness. However, where TF1-366 has given more general evidence, or has testified about his own experiences, the Chamber has accepted his evidence without corroboration.

5.5.1.3. TF1-361

547. TF1-361 testified that he was captured by the RUF in 1991.[1007] TF1-361 was trained at Camp Zogoda.[1008] The witness testified comprehensively with regard to the RUF, including his functions in the RUF, its command structure and on specific crimes.

[1001] Transcript of 7 November 2005, TF1-366, pp. 55-56 (CS).
[1002] Transcript of 8 November 2005, TF1-366, p. 63 (CS).
[1003] Sesay Final Trial Brief, paras 336, 387.
[1004] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL 04-15-T, Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366, 12 January 2006; Decision on Sesay Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366, 22 July 2006.
[1005] Kallon Final Trial Brief, para. 316.
[1006] Gbao Final Trial Brief, para. 278.
[1007] Transcript of 11 July 2005, TF1-361, pp. 41-42 (CS).
[1008] Transcript of 11 July 2005, TF1-361, pp. 41-42 (CS).

548. The Sesay Defence objected to the testimony of TF1-361 on the grounds of his "verbal contortions".[1009] The Sesay Defence also raised concerns about TF1-361's loyalties, claiming his fierce loyalty to Superman, and the in-fighting that took place between Superman and Sesay, made it impossible for this witness to provide an unbiased account.[1010] The Kallon Defence found TF1-361's testimony unreliable because the witness attempted to over-implicate the Accused, as well as contradict himself regarding material events.[1011]

549. The Chamber has considered the concerns of the Defence Counsel, but concludes that, on the whole, TF1-361 was a reliable witness and has generally believed his evidence. The witness' testimony was internally consistent as well as consistent with the evidence of other credible witnesses. Although TF1-361 was an insider witness, he testified in a forthright and compelling manner and as one who was genuinely committed to assisting the Chamber. Accordingly, the Chamber has largely accepted his evidence. Exceptionally, where there could have been doubts as to his testimony given his status as an insider witness, the Chamber admonished itself accordingly.

5.5.1.4. TF1-367

550. TF1-367 joined the RUF voluntarily in 1990 and trained at Camp Naama.[1012] He remained with the RUF for the duration of the war. TF1-367 testified about diamond mining at Tongo Field, forced labour and logistics during the Junta.[1013]

551. The Sesay Defence raised concerns about TF1-367's testimony on the basis that the witness had occasionally lied and was generally unreliable.[1014] The Kallon Defence submitted that TF1-367's rampant dishonesty undermined his testimony.[1015]

552. The Chamber is of the view that the testimony of TF1-367 was generally credible. The witness recounted events confidently and showed a genuine interest in assisting the Chamber. The Chamber is of the view that any inconsistencies in his testimony were minor, and has

[1009] Sesay Final Trial Brief, para. 786.
[1010] Sesay Final Trial Brief, para. 843.
[1011] Kallon Final Trial Brief, paras 348, 353.
[1012] Transcript of 21 June 2006, TF1-367, p. 46 (CS).
[1013] Transcript of 21 June 2006, TF1-367, pp. 55, 58-59 (CS).
[1014] Sesay Final Trial Brief, paras 450, 595, 660.
[1015] Kallon Final Trial Brief, paras 360-362.

largely accepted his evidence as being trustworthy.

5.5.1.5. TF1-362

553. TF1-362 voluntarily joined the RUF in Liberia in 1990.[1016] TF1-362 remained with the RUF throughout the war up until disarmament.[1017] Most of this witness' testimony centred on RUF training and recruiting.

554. The Sesay Defence expressed concerns about the testimony of TF1-362 because of the hostility harboured by the witness towards Sesay, and that the testimony was patterned to implicate him.[1018]

555. The Chamber considers that even if these allegations were well-founded, we have approached the testimony of TF1-362 concerning Sesay with caution. Generally, however, the Chamber has found the testimony of TF1-362 to be credible and has largely accepted this witness' evidence.

5.5.1.6. George "Junior Lion" Johnson

556. George Johnson joined the Sierra Leone military in 1993 in Kenema, and fought against the RUF.[1019] Following the coup, the witness was released from Pademba Road Prison in Freetown and joined the AFRC Junta.[1020] Eventually, Johnson separated from the main AFRC faction and became an Operation Commander with the West Side Boys.[1021] He testified extensively about the operations of the West Side Boys until the Lomé Peace Accord, as well as the 6 January 1999 invasion and events during the Junta.

557. The Kallon Defence submits that George Johnson is not a credible witness because he over-implicated Kallon, and testified that Kallon had a higher rank than he actually held.[1022] The Kallon Defence also argued that Johnson's testimony was unreliable because it was inconsistent with his previous statements, and because he minimized his own role in the

[1016] Transcript of 20 April 2005, TF1-362, p. 5 (CS).
[1017] Transcript of 20 April 2005, TF1-362, p. 6 (CS).
[1018] Sesay Final Trial Brief, paras 8, 362, 376.
[1019] Transcript of 19 October 2004, George Johnson, pp. 100-101.
[1020] Transcript of 19 October 2004, George Johnson, p. 102.
[1021] Transcript of 14 October 2004, George Johnson, p. 102.
[1022] Kallon Final Trial Brief, para. 366.

conflict.[1023]

558. The Chamber finds that George Johnson is a credible witness whose testimony was forthright and compelling in that he exhibited a convincing grasp of the events and did not testify about events beyond his knowledge. In the Chamber's considered view, his demeanour in Court also indicated that he was genuinely assisting the Court to arrive at the truth. Moreover, none of the substantive aspects of Johnson's testimony were impeached in cross-examination. As such, his testimony is generally accepted as reliable and trustworthy.

5.5.1.7. TF1-045

559. TF1-045 testified that he and his family were captured by the RUF in Pujehun District in 1991.[1024] In 1996 Sankoh assigned the witness to work as a bodyguard in the RUF.[1025] Eventually, the witness rose to a high rank within the RUF.[1026] TF1-045 testified about diamond mining at Tongo Field, as well as about rape and looting and the command structure during the AFRC/RUF Junta.

560. The Sesay Defence raised concerns about the testimony of TF1-045 because it asserted that he harboured hostility toward Sesay, was unreliable with respect to his evidence about civilian diamond mining, and attempted to over-implicate the Accused.[1027] The Kallon Defence stated that TF1-045 was entirely unreliable and untruthful as he had attempted to implicate Kallon and to unnecessarily shift blame for the war to Kallon.[1028] The Kallon Defence argued that the whole of TF1-045's testimony should be disregarded.[1029] The Gbao Defence asserted that the Chamber should approach TF1-045's testimony with caution, especially as it related to the Kamajor killings in Kailahun because the witness' testimony that he was there was unrealistic and unreliable.[1030] The Gbao Defence asserted TF1-045's testimony contained "inconsistencies, exaggerations and omissions of material facts" and that every detail of his

[1023] Kallon Final Trial Brief, paras 369-376.
[1024] Transcript of 18 November 2005, TF1-045, p. 47 (CS).
[1025] Transcript of 18 November 2005, TF1-045, p. 49 (CS).
[1026] Transcript of 18 November 2005, TF1-045, pp. 50-51 (CS).
[1027] Sesay Final Trial Brief, paras 8, 276, 329, 447.
[1028] Kallon Final Trial Brief, paras 384-388.
[1029] Kallon Final Trial Brief, para. 315.
[1030] Gbao Final Trial Brief, paras 862, 872-873.

testimony should be disregarded.[1031]

561. The Chamber has duly considered the concerns of all three Defence teams and is of the view that TF1-045 provided helpful evidence, including useful information regarding the command structure and the functioning of the RUF as a movement. The Chamber opines that TF1-045 appeared confident and truthful while testifying, and that the overall purpose of his appearance in Court was to assist the Chamber in its search for the truth. Due to the fact that TF1-045 is a protected witness, the Chamber has, however, exercised caution when using his evidence. When the witness gave testimony that related directly to the acts and conduct of the Accused, the Chamber has required corroboration of that evidence. Generally speaking, however, the Chamber is of the considered view that TF1-045's testimony is credible.

5.5.1.8. TF1-360

562. TF1-360 testified that he was captured by the RUF in Pujehun District in April 1991.[1032] He was trained in the RUF, and remained in the movement, performing a specific role, until the end of the war.[1033]

563. While the Sesay Defence often accepted TF1-360's testimony, it raised concerns about internal contradictions in this witness' testimony.[1034] The Kallon Defence voiced stronger problems with the credibility of this witness, noting that he had a tendency to exaggerate the role of Kallon and gave materially inconsistent statements.[1035] The Kallon Defence argued that all of TF1-360's testimony should be ignored.[1036]

564. The Chamber notes that the testimony of TF1-360 was not always clear. While there were some discrepancies in this witness' testimony about dates, times and locations, the Chamber does not consider these to be material. The witness impressed the Chamber as a substantively truthful and forthright witness. In fact, the core of his testimony was consistent with the overall evidence adduced and accepted. On the whole, the Chamber is of the considered view that the evidence of TF1-360 is to be generally accepted as being credible.

[1031] Gbao Final Trial Brief, para. 875.
[1032] Transcript of 19 July 2005, TF1-360, p. 92 (CS).
[1033] Transcript of 19 July 2005, TF1-360, p. 94 (CS).
[1034] Sesay Final Trial Brief, para. 779.
[1035] Kallon Final Trial Brief, paras 331, 336.
[1036] Kallon Final Trial Brief, para. 315.

5.5.2. Defence Witnesses

5.5.2.1. DIS-069

565. DIS-069 testified that in 1991 he voluntarily joined the RUF and trained at Pendembu.[1037] DIS-069 stayed with the RUF until disarmament, when he joined the ceasefire monitoring committee in Kenema.[1038]

566. The Chamber has evaluated the evidence given by DIS-069 and finds that it is generally implausible and unreliable. The Chamber considers that this witness did not testify in order to assist the Chamber in its search for the truth, but to assist the Accused. This witness' evidence runs counter to the entirety of evidence adduced by witnesses which this Chamber has found to be more reliable. In particular, where TF1-362 and DIS-069 have testified about the same events, the Chamber has found the testimony of TF1-362 to be more coherent, consistent and reliable. As such, the Chamber has generally rejected DIS-069's version of events unless corroborated by other credible evidence.

5.5.2.2. DIS-188

567. DIS-188 joined the RUF in Kangama in 1991, working as a mediator between the fighters and the civilian population.[1039] He has testified that he was an adherent of the RUF ideology.[1040] The witness was a member of the RUF for the entirety of the war, and his testimony covered everything from command structure, to RUF farming, to the alleged use of child soldiers.

568. The Chamber has serious concerns about the veracity of this witness' testimony. Much of DIS-188's evidence was inconsistent, and the Chamber is reluctant to accept it. On the whole, the Chamber opines that DIS-188's testimony was influenced in part by his support for the RUF movement and its ideology, and that he was not genuinely assisting the Court to arrive at the truth. However, where DIS-188's testimony has been corroborated and confirmed by the evidence of reliable witnesses, the Chamber has relied upon his evidence for that limited purpose.

[1037] Transcript of 19 October 2007, DIS-069, pp. 22-23 (CS).
[1038] Transcript of 19 October 2007, DIS-069, pp. 46-47 (CS).
[1039] Transcript of 19 October 2007, DIS-069, pp. 66-67 (CS).
[1040] Transcript of 19 October 2007, DIS-069, p. 50 (CS).

5.5.2.3. DIS-157

569. DIS-157 voluntarily joined the RUF prior to the invasion on Sierra Leone in 1991.[1041] He testified about military operations of the RUF, how the RUF was supposed to treat civilians, as well as the relationship between the RUF and the AFRC.

570. After an analysis of the evidence of DIS-157, the Chamber finds that he is generally an unreliable witness. His testimony was inconsistent with that of other witnesses that the Chamber found to be credible, and some versions of the events given by this witness are completely implausible. For instance, DIS-157 testified that there was no forced farming in Kailahun between 1997 and 2000. The Chamber is unwilling to accept a claim that is so heavily refuted and contradicted by the overwhelming weight of reliable testimony. However, the Chamber found that some aspects of DIS-157's testimony could be accepted as credible where that testimony is supported by the general evidence or is corroborated by some other reliable evidence.

5.5.2.4. DAG-048

571. DAG-048 testified that he was approached by the RUF in Pendembu in 1991, and was forced to join the RUF in 1992.[1042] Although the witness was compelled to join the RUF, he grew to embrace and to adopt the RUF ideology and served in the RUF until the end of the war.[1043]

572. The Chamber has examined DAG-048's testimony and has found that it is generally unreliable. This witness' version of events was inconsistent with the version told by many other witnesses that the Chamber has accepted as being trustworthy. When compared with the general thrust of the evidence adduced at trial, DAG-048's account differs to the extent that the Chamber regards the essence of his testimony as inconsistent, unreliable and untrustworthy and unacceptable. However, where this witness's evidence is corroborated by accepted, reliable witnesses, the Chamber will accept his testimony for that limited purpose.

5.5.2.5. DAG-111

[1041] Transcript of 24 January 2008, DIS-157, pp. 17-18, 20-21 (CS); Transcript of 28 January 2008, DIS-157, pp. 3-5.
[1042] Transcript of 3 June 2008, DAG-048, pp. 5, 8.
[1043] Transcript of 3 June 2008, DAG-048, p. 10; Transcript of 5 June 2008, DAG-048, p. 24.

573. DAG-111 was employed by Gbao as his driver and mechanic for a year and a half, first in Kailahun Town and then in Makeni.[1044] DAG-111 gave detailed testimony in relation to the attacks on UNAMSIL peacekeepers in May 2000 and the movements and conduct of Gbao at this time.

574. In particular, DAG-111 testified that he accompanied Gbao to Makump DDR camp on 1 May 2000 with two other RUF members in order to investigate reports that RUF fighters had been forcibly disarmed. Upon arrival, Gbao was vexed and angry.[1045] However, Gbao spoke to several peacekeepers outside the camp and calmed down when he was informed that the MILOBs had effected disarmament. Gbao remained at the camp while DAG-111 returned to Makeni at Gbao's request and informed Kailondo that the situation was under control.[1046]

575. When DAG-111 returned to the camp, Gbao was calmly talking to the peacekeepers outside. However, shortly thereafter Kailondo arrived in a vehicle with ten men. Kailondo was angry and fired his AK-47 in the air. Gbao attempted to pacify him but to no avail.[1047] A second car then arrived from Makeni and Kallon descended with seven men. Kallon was armed and joined Kailondo.[1048] Gbao spoke to them both, attempting to calm them, as more armed men arrived, bringing the number of those present to around 50 fighters.[1049] According to DAG-111, at this point Gbao became afraid and departed the camp.[1050]

576. The Chamber notes that former UNAMSIL peacekeepers Major Ganase Jaganathan and Brigadier Leonard Ngondi also testified in relation to these events.[1051] Jaganathan, who had met Gbao on approximately three previous occasions, attended Makump DDR Camp to speak to Gbao and Ngondi was in radio communication with one of his subordinates, Major Maroa, who was also at the scene. The Chamber is satisfied that these witnesses were genuinely attempting to assist the Court and their testimony in relation to the events of 1 May 2000 at Makump DDR camp was detailed and consistent.

[1044] Transcript of 17 June 2008, DAG-111, pp. 50-58.
[1045] Transcript of 17 June 2008, DAG-011, pp. 68-69, 71, 74; Transcript of 19 June 2008, DAG-011, pp. 25, 29.
[1046] Transcript of 17 June 2008, DAG-011, pp. 75-78.
[1047] Transcript of 17 June 2008, DAG-011, pp. 94-98
[1048] Transcript of 17 June 2008, DAG-011, pp. 98-99, 134-136; *See* Transcript of 19 June 2008, DAG-111, pp. 29-32, 34 for identification of Kallon as the second Commander to arrive.
[1049] Transcript of 17 June 2008, DAG-011, pp. 98-99, 134-136.
[1050] Transcript of 17 June 2008, DAG-111, pp. 137-138.

577. Jaganathan and Ngondi testified that Gbao was present at the Makump DDR camp with around 30 to 40 armed fighters. Gbao appeared drunk and angry and was threatening that he would not leave the camp unless his disarmed fighters were returned to him.[1052] Kallon subsequently arrived and abducted Jaganathan. No other Commander arrived at the scene, and Gbao stood at Kallon's vehicle armed with an AK-47 while Jaganathan was forced inside and driven away.[1053]

578. Having carefully examined the entirety of the evidence pertaining to Gbao's conduct at Makump DDR camp, the Chamber finds the discrepancies between the testimony of DAG-111 and the evidence of Jaganathan and Ngondi to be so significant as to render the testimony of DAG-111 in relation to the events of 1 May 2000 unreliable. The Chamber is unwilling to accept evidence that is contradicted by the corroborated testimony of two reliable witnesses. The Chamber has therefore not relied on the testimony of DAG-111 in its findings on this incident.

5.6. Former Child Soldiers

579. Several of the witnesses who testified were former child combatants who had been captured by the RUF at ages as young as ten. Many of these child witnesses experienced serious physical and mental trauma both during and after the war. Many were forced to consume or use drugs throughout their time in the RUF. Due to the fact that the events they attempt to recount took place largely during their childhood, their ability to recall such events is compounded by the passage of time. This means that such witnesses generally experienced difficulty in remembering specific details about such events, and various minor discrepancies are identifiable in their evidence. However, the Chamber has generally accepted the evidence of former child soldiers, especially as it relates to their own experiences. The following is a credibility evaluation of some of the key former child soldier witnesses.

[1051] *See* Transcript of 20 June 2006, Ganase Jaganathan, pp. 20-28; Transcript of 29 March 2006, Leonard Ngondi, pp. 29-34.
[1052] Transcript of 20 June 2006, Ganese Jaganathan, p. 22; Transcript of 29 March 2006, Leonard Ngondi, p. 28.
[1053] Transcript of 20 June 2006, Ganese Jaganathan, p. 26; Transcript of 21 June 2006, Ganese Jaganathan, p. 24; Transcript of 22 July2005, TF1-360, pp. 5-6 (CS).

5.6.1. TF1-141

580. The RUF captured TF1-141 in Koidu Town in 1998 during the Junta period.[1054] TF1-141 testified that he was taken to the Guinea Highway by the RUF, where he went on food-finding missions with other small boy units (SBUs), and that he also worked as a bodyguard.[1055] The witness remained with the RUF until 2000, when he was disarmed at a demobilisation, disarmament and reintegration ("DDR") camp.[1056]

581. The Sesay Defence asserted that TF1-141 was unreliable because he contradicted himself on several issues and attempted to over-implicate Sesay.[1057] The Kallon Defence stated that TF1-141's testimony contained many internal inconsistencies and contradictions, and was too rehearsed to be believed.[1058] The Gbao Defence expressed concern with the numerous contradictions throughout this witness' testimony.[1059]

582. The Chamber has evaluated TF1-141's credibility and shares some of the concerns raised by the Defence. In particular, the Chamber is uneasy with portions of TF1-141's testimony that appear to be fanciful and thus implausible.

583. The Chamber notes, however, that although the witness was diagnosed with Post-Traumatic Stress Disorder ("PTSD") originating from his experiences as a child soldier with the RUF,[1060] a psychologist's report submitted prior to his testimony indicated that he was able to testify in court proceedings.[1061] The Chamber is thus reassured that the witness was able to give truthful testimony. In addition, TF1-141 came across as a candid witness and the Chamber has generally accepted his testimony, especially as it relates to his own experiences as a child combatant. However, where the witness has testified about the acts and conduct of the Accused, the Chamber has required corroboration of his testimony.

[1054] Transcript of 11 April 2005, TF1-141, pp. 80, 82.
[1055] Transcript of 11 April 2005, TF1-141, p. 89.
[1056] Transcript of 11 April 2005, TF1-141, p. 79.
[1057] Sesay Final Trial Brief, paras 341, 352, 448, 791.
[1058] Kallon Final Trial Brief, paras 467-472.
[1059] Gbao Final Trial Brief, paras 1244-1245.
[1060] Exhibit 15, Declaration of An Michels Regarding Prosecution Witness TF1-141, SCSL Registry p. 10160, 16 December 2004.
[1061] Exhibit 15, Declaration of An Michels Regarding Prosecution Witness TF1-141, SCSL Registry p. 10160, 16 December 2004.

5.6.2. TF1-263

584. TF1-263 testified that he was living in Koidu Town in 1998 when the rebels attacked his village.[1062] The witness was eventually captured by the RUF and forced to train and fight with other civilians of both his age and older.[1063] The witness testified extensively, and provided direct evidence regarding abductions, looting, murder by Sesay, mistreatment of civilians, the command structure of the RUF, widespread and mass killings, kidnapping of UNAMSIL personnel, and the direct orders of Sesay and Kallon on missions.

585. The Sesay Defence claims the testimony of TF1-263 is "inherently unreliable", in part due to inconsistencies between his testimony and his prior statements to the Prosecution.[1064]

586. The Chamber recognizes that TF1-263's testimony was problematic in some respects, as there were occasions where the witness implicated one of the Accused in a way that the evidence does not support. As a result of these concerns, the Chamber has required corroboration of any evidence of this witness that relates to the acts and conduct of any of the three Accused.

587. While the Chamber observes that there were minor inconsistencies in his testimony, it notes that the witness was very young at the time the offences were committed, which may explain the slight discrepancies in his evidence. On the whole, the Chamber finds the witness generally credible, as the alleged inconsistencies are mostly minor. As such, the Chamber largely accepts this witness' testimony, particularly as it relates to his own experiences.

5.6.3. TF1-117

588. TF1-117 testified that he was living in Gboajibu village in 1992 when the RUF, led by Gbao, attacked his village.[1065] TF1-117 stated that he was taken to Kono where he was given drugs and where the RUF trained him in combat.[1066] The witness testified extensively regarding amputations, the command structure of the RUF, attacks on civilians and peacekeepers, as well as his general movements across Sierra Leone during the time he spent with the RUF.

[1062] Transcript of 6 April 2005, TF1-263, p. 7.
[1063] Transcript of 6 April 2005, TF1-263, pp. 28-29.
[1064] Sesay Final Trial Brief, paras 351, 443, 1145.
[1065] Transcript of 29 June 2006, TF1-117, p. 89.
[1066] Transcript of 29 June 2006, TF1-117, p. 91.

589. The Sesay Defence states that TF1-117 is highly unreliable and in the Chamber's view, his evidence alone is not sufficient to sustain a conviction on any count.[1067] Specifically, the Sesay Defence claims that the witness describes events that no other witnesses recount, and tended to over-implicate Sesay.[1068] The Gbao Defence considered the witness TF1-117 to be one of the five most problematic and unreliable witnesses in the RUF trial.[1069] The Gbao Defence took issue with this witness' testimony because he implicates Gbao in the use of child soldiers; states that Gbao participated in RUF attacks; and generally provided exaggerated, contradictory and unrealistic accounts of events.[1070]

590. The Chamber has evaluated the arguments of Defence Counsel for Sesay and Gbao, and shares their concerns in some respects. The Chamber finds that portions of TF1-117's testimony are inconsistent. Specifically, TF1-117's testimony regarding the command structure of the RUF was often vague and contradictory, which made it difficult to assess or accept. Insofar as his evidence relates to the RUF command structure or relates directly to the acts and conduct of the Accused, the Chamber has required corroboration of this witness' testimony. There were, however, some instances when this witness provided useful and compelling evidence to the Court. In these instances, and when the evidence directly reflected TF1-117's personal experiences, the Chamber has accepted his evidence.

5.6.4. TF1-314

591. TF1-314 testified that in 1994 at the age of 10, she was captured and raped by the RUF in Masingbi, Tonkolili District.[1071] Following this violation, she was given the choice by an RUF fighter of being killed or accompanying the RUF. She chose to follow the RUF.[1072] She testified that she was eventually trained as part of a small girls unit ("SGU"); went on food-finding missions for the RUF; and married a rebel named Scorpion.[1073]

592. The Sesay Defence claims the testimony of TF1-314 lacks credibility, specifically with regard to her alleged military training. The Sesay Defence states that her inability to recall how

[1067] Sesay Final Trial Brief, paras 670-671, 676.
[1068] Sesay Final Trial Brief, paras 676, 1339.
[1069] Gbao Final Trial Brief, para. 283.
[1070] Gbao Final Trial Brief, paras 348-349, 357-358, 360.
[1071] Transcript of 2 November 2005, TF1-314, p. 25 (CS).
[1072] Transcript of 2 November 2005, TF1-314, p. 26 (CS).
[1073] Transcript of 2 November 2005, TF1-314, pp. 31, 33, 56 (CS).

to dismantle a gun or participate in an ambush shows that she is unreliable and that doubts can be cast on whether she was actually given military training by the RUF.[1074] The Gbao Defence asserts that this witness is not credible because there are significant inconsistencies in her evidence, as well as retractions of material aspects of her testimony.[1075]

593. The Chamber has evaluated the concerns of the Defence and has decided that most of TF1-314's testimony is credible and will be accepted. The Chamber notes that the witness may have been confused at times regarding times, locations and troop movement. The witness provided unsubstantiated evidence concerning certain events which will not be accepted by the Chamber.[1076]

594. Overall, the Chamber opines that the evidence of TF1-314 is largely credible. The Chamber is of the considered view that slight variations between TF1-314's prior statements and those made at trial are immaterial to a credibility determination of this witness' overall evidence. However, the Chamber will require corroboration of any evidence which relates to the acts and conduct of any of the three Accused.

5.7. Other witnesses

5.7.1. TF1-108

595. TF1-108 held a position of authority within the RUF.[1077] TF1-108 stated that the RUF entered his village in 1991 and appointed him[1078] to be in charge of organising and coordinating food shipments to the RUF fighters from the civilian population.[1079] TF1-108 held this position for the duration of the war.[1080]

596. The Sesay Defence argued that the testimony of TF1-108 is patently unreliable due in part to the fact that the witness' account of his wife's gruesome rape and death was a

[1074] Sesay Final Trial Brief, para. 437.
[1075] Gbao Final Trial Brief, paras 436-440.
[1076] Transcript of 7 November 2005, TF1-314, pp. 13-14 (CS).
[1077] Transcript of 7 March 2006, TF1-108, p. 81 (CS).
[1078] Transcript of 7 March 2006, TF1-108, p. 84 (CS), in 1996, TF1-108's title was changed but his duties did not change in any way.
[1079] Transcript of 7 March 2006, TF1-108, p. 84 (CS).
[1080] Transcript of 7 March 2006, TF1-108, p. 83 (CS).

fabrication exposed when the Sesay Defence called his wife as a witness.[1081] The Gbao Defence states that this witness is unreliable and that the credibility of important aspects of his testimony had been exposed as incorrect by the Defence.[1082] The Gbao Defence specifically took issue with TF1-108's testimony concerning forced labour, stating that he was the "first significant witness against Gbao" after nearly two years of trial proceedings who directly implicated Gbao in allegations of forced labour.[1083]

597. In assessing the veracity of TF1-108's testimony, the Chamber shares the concerns of the Defence, and doubts the credibility of this witness, particularly in light of his misleading evidence concerning the death of his wife. The Chamber, while exercising caution with regard to the evidence given by TF1-108, has accepted portions of his testimony that are corroborated by a reliable source when such evidence dealt with the acts and conduct of the Accused, as well as his general descriptions of events. The Chamber has accordingly rejected his testimony on the raping to death of his wife as fallacious. We however, have found and accepted his testimony on matters within his personal knowledge and touching on his activities and involvement in the conflict within his locality as credible where corroborated by other credible and reliable evidence particularly on issues of forced labour, 'forced marriages' and inhumane treatement of civilians.

5.7.2. TF1-113

598. TF1-113 testified that she was captured by the RUF in Pendembu in 1991,[1084] and provided information on abductions; forced labour; the murders of suspected Kamajors; and "government" farming.

599. The Sesay Defence raised credibility concerns with regard to this witness due to significant inconsistencies in her testimony.[1085] The Gbao Defence submitted that as the witness had avoided answering certain questions and had provided contradictory answers to questions concerning material events, her testimony with regard to the killings of suspected

[1081] Sesay Final Trial Brief, para. 256.
[1082] Gbao Final Trial Brief, para. 286
[1083] Gbao Final Trial Brief, para. 284.
[1084] Transcript of 2 March 2006, TF1-113, p. 37 (CS).
[1085] Sesay Final Trial Brief, para. 330.

Kamajors in Kailahun was not truthful.[1086]

600. The Chamber has examined the concerns raised by the Sesay and Gbao Defence. The Chamber notes that while TF1-113 tended to misstate the facts during certain portions of her testimony, it remains unconvinced that this is sufficient reason to consider the whole of her evidence unreliable. The Chamber has, however, before considering the use of TF1-113's evidence, exercised extreme caution and often found it necessary to seek other corroborative evidence.

5.7.3. TF1-093

601. TF1-093 testified that she was captured by the RUF in Njala, Moyamba District, in 1996.[1087] She stated that, on the day of her captured she was raped, stabbed and forced into marriage with an RUF Commander.[1088] TF1-093 said that she was also trained in the use of firearms and RPG, and in guerrilla warfare.[1089] The witness provided direct evidence on amputations, forced labour, child soldiers, lootings, burnings, unlawful killings and rapes.

602. The Sesay Defence found TF1-093's testimony problematic because her testimony was replete with "contradiction, confusion and inconsistencies" and was fundamentally unreliable.[1090]

603. The Chamber shares the concerns of the Sesay Defence, and finds the testimony of TF1-093 generally unreliable. The Chamber is of the considered view that this witness is often inconsistent and prone to exaggeration. Although much of her testimony has been rejected, the Chamber accepts the core of her testimony, particularly as it relates to her own experiences, such as the time she spent as a "bush" wife. The Chamber has otherwise relied upon her evidence to the extent that it was corroborated by reliable witnesses and is consistent with the general story adduced by other evidence.

[1086] Gbao Final Trial Brief, paras 472, 480, 482.
[1087] Transcript of 29 November 2005, TF1-093, pp. 73-74 (CS).
[1088] Transcript of 29 November 2005, TF1-093, p. 76 (CS).
[1089] Transcript of 29 November 2005, TF1-093, p. 88 (CS).
[1090] Sesay Final Trial Brief, paras 238, 297.

5.8. Testimony of the Accused

604. The Chamber refers to its previous discussion regarding the right of the accused persons to testify in their own defence,[1091] and recalls that no adverse inferences were drawn from Gbao's decision not to testify. It has made the following credibility findings about Sesay and Kallon.

5.8.1. Issa Sesay

605. The Chamber has concerns regarding both the veracity and accuracy of Sesay's testimony. Portions of Sesay's recounting of events are simply implausible, and do not correspond with the rest of the evidence as a whole. For instance, Sesay testified that he was scared to punish Komba Gbundema, who was acting on Sankoh's orders, as he was afraid of Sankoh's reaction. This would seem unlikely when compared to the overwhelming weight of evidence to the contrary,[1092] and is especially problematic given that Sesay was the interim leader of the RUF at the time.[1093] In addition, Sesay's testimony that children were only trained for defensive purposes and that there were no child combatants in Kono[1094] is entirely unrealistic, and in any event immaterial to the elements of the crime. Ngondi testified that at a meeting to discuss how the RUF had impeded the operation of Caritas, which was identifying child combatants abducted by the RUF in an effort to reunite them with their families, Sesay was concerned that Caritas was removing "their" combatants from the territory.[1095] Moreover, the Chamber does not accept Sesay's *ex post facto* rationalisations for why he acted in certain ways.

606. The Chamber has accepted Sesay's testimony on matters relating to some aspects of the nature and scope of the command structure of the RUF, given his position in the hierarchy of the RUF High Command.

607. The Chamber, acknowledges that Sesay's knowledge of the RUF command structure was irregular with regard to certain organisational and operational matters, including the diverse activities created by the war situation, and accepted such testimony as credible. For

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[1091] *Supra* paras. 476 and 477.
[1092] Transcript of 25 May 2007, Issa Sesay, pp. 65, 67, 73.
[1093] Transcript of 22 April 2005, TF1-362, pp. 75-76 (CS).
[1094] Transcript of 3 May 2007, Issa Sesay, pp. 78, 80; Transcript of 25 May 2007, Issa Sesay, p. 93.

instance, Sesay testified that soon after the AFRC seized power, Johnny Paul Koroma invited the RUF to form an alliance with the AFRC. Sankoh accepted the invitation and ordered the RUF to join the AFRC. We also accepted other parts of Sesay's evidence when we deemed it to be relevant and credible and where the Chamber was certain that such evidence was not a deliberate manipulation by Sesay to distort the truth or mislead the Chamber with regard to the issue of his liability or that of Kallon and Gbao.

608. It is the considered view of the Chamber that Sesay's credibility is at issue and his version of events has not generally been accepted, particularly the evidence which deals with his conduct or the conduct of his co-Accused. Given the rank he held in the RUF from its inception until disarmament, at which time he was the acting leader of an insurgent movement in which there was continuous infighting, suspicion, mistrust and rivalry, it is simply unacceptable to believe that the Accused played the meaningless and at times peaceful role he attempts to portray. It is highly improbable, given the totality of the evidence, that a high-ranking officer of the RUF hierarchy would adopt the role of a pacifist essentially concerned with the well-being of the civilian population throughout the entire conflict, which is the position Sesay would have the Chamber believe. We disbelieve him in this posturing.

5.8.2. Morris Kallon

609. Kallon failed to impress the Chamber as a truthful witness and the Chamber repudiates his testimony. We are of the opinion that most of the responses and explanations given by Kallon throughout the trial proceedings, particularly those concerned with his alibi were implausible afterthoughts and to an extent, recent fabrications. As an example, TF1-122 testified during the Prosecution case that he had intervened to prevent soldiers taking the property of a woman who had failed to stand still during a flag raising ceremony held in Kenema.[1096] Kallon testified to an almost identical incident, but does not mention TF1-122, stating rather that he had thwarted the attempt of the soldiers to steal the woman's property.[1097] In the Chamber's view, this suggests a conscious attempt by Kallon to allign his testimony to the evidence presented during the Prosecution case, including attempting to put himself in a favourable light by downplaying or accentuating his role in incidents described by Prosecution

[1095] Transcript of 29 March 2006, Leonard Ngondi, pp. 12-13.
[1096] Transcript of 7 July 2005, TF1-122, pp. 65, 67.

witnesses. In many instances, the evidence that Kallon gives contradicts the weight of credible evidence presented by other reliable witnesses. In some instances, when compared with evidence accepted by the Chamber as credible, Kallon's dubious recounting of events is made implausible. For instance, Kallon testified that in May 2000, he was afraid to arrest Kailondo who was acting on Sankoh's orders. This is highly unlikely as Kallon was Battle Ground Commander at the time.[1098] As such, the Chamber rejects most of Kallon's testimony, except in instances where that testimony is corroborated by reliable witnesses. We believe the evidence of DAG-111 that he was there and that he perpetrated the acts alleged against him in the Indictment in Count 15 and that he was not present at the Makump Camp on 1 May 2000 when UNAMSIL personnel were besieged and being mistreated.

610. In the Chamber's opinion Kallon patterned his testimony to suit his defence of alibi. His alibi is in the Chamber's view fabricated, unreliable and implausible.

5.9. Kallon's Alibi

5.9.1. Procedural History

611. In its Pre-Trial Brief, the Kallon Defence did not raise any alibi claims, although it did explicitly reserve "the right to enter a Special Defence on behalf of Morris Kallon".[1099] On 27 October 2006, at the Defence Status Conference, the Kallon Defence repeated its pre-trial position regarding the use of a special defence.[1100] The Kallon Defence stated that it was reserving its right to use a Special Defence under Rule 67, and undertook to inform the Chamber when a decision was made on the issue.[1101] At the Pre-Defence conference of 20 March 2007, the Kallon Defence "authoritatively" stated that it would not rely upon an alibi or any other special defence.[1102]

612. On 28 March 2007, however, the Kallon Defence retracted its prior undertaking and

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[1097] Transcript of 14 April 2008, Morris Kallon, p. 108.
[1098] Transcript of 17 April 2008, Morris Kallon, pp. 4-5.
[1099] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Kallon Pre-Trial Brief, 1 July 2004, para. 37 [Kallon Pre-Trial Brief].
[1100] Status Conference on Defence, Transcript of 27 October 2006, p. 20.
[1101] Status Conference on Defence, Transcript of 27 October 2006, p. 20.
[1102] Pre-Defence Conference, Transcript of 20 March 2007, p. 84.

indicated that it would rely upon an alibi and other special defences.[1103] On 30 March 2007, the Prosecution filed a motion seeking an order by the Chamber to compel the Kallon Defence to comply with Rule 67.[1104] In its ruling, the Trial Chamber declared that the Kallon Defence had failed to comply with Rule 67(A)(ii). The Chamber ordered the Kallon Defence to provide the Prosecution with a notice of alibi indicating the places where Kallon claimed to have been present at the times of the commission of the alleged crimes and the identification of witnesses and any other evidence that were to be called to support the alibi.[1105]

613. The Chamber recalls its earlier discussion on the law of alibi, and the provisions of Rule 67(A)(ii)(a) of the Rules, which require that:

> (A) As early as reasonably practicable and in any event prior to the commencement of the trial:
>
> (i) [...]
>
> (ii) The Defence shall notify the Prosecutor of its intent to enter:
>
> (a) The defence of alibi; in which case the notification shall specify the place or places at which the Accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the Accused intends to rely to establish the alibi.

5.9.2. Alibi: Kallon's Submissions

5.9.2.1. Alibi for Bo District

614. In its Notification of Alibi, the Kallon Defence stated that Kallon, during the period charged in the Indictment for the Bo District, was based in Makeni between 1 June 1997 and 30 June 1997.[1106] At trial, Kallon testified that during that period he was based at Teko Barracks.[1107] Kallon stated that he remained at Teko Barracks in Makeni and did not proceed

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[1103] Correction of Statement Made at Pre-Trial Defence Conference, 28 March 2007, located as Appendix A in the Prosecution Motion that the Second Accused Comply with Rule 67.
[1104] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Prosecution Motion that the Second Accused Comply with Rule 67, 30 March 2007, para. 8.
[1105] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Decision on the Prosecution Motion that the Second Accused Comply with Rule 67, 1 May 2007, Orders (a), (b) and (c).
[1106] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Defence for Morris Kallon's Notification of Alibi, 8 May 2007, p. 2 [Kallon Notification of Alibi].
[1107] Transcript of 11 April 2008, Morris Kallon, pp. 100, 102.

with the other RUF to Freetown as he did not entirely trust the AFRC.[1108]

615. In support of this aspect of his alibi, the Kallon Defence called witness DMK-160. The witness testified that only Mosquito had passed through Bo during the Indictment period and that the witness had never even heard of an individual named Morris Kallon until August 1997.[1109] DMK-161 also testified about Kallon's alleged presence in Makeni during this period.[1110]

5.9.2.2. Alibi for Kenema District

616. In its Notification of Alibi as it related to Kenema District, the Kallon Defence stated that Kallon was not in Kenema between 25 May 1997 and 28 February 1998.[1111] The Notice placed Kallon in Makeni from 5 June 1997, until August 1997 when he travelled to Bo District, and where he remained until the retreat in mid-February 1998.[1112]

617. At trial, Kallon testified that he was at Kangari Hills on or about 25 May 1997.[1113] Kallon stated that on that day he came under heavy attack from Kamajors, and on 1 June 1997 he left for Matotoka.[1114] Kallon testified that on 3 June 1997, the CDF launched an attack on Matotoka and he was forced to flee to Teko Barracks, where he remained until 2 August 1997.[1115] Kallon stated that on 2 August 1997, Bockarie ordered him to go to Bo and that he remained there until the Intervention in February 1998.[1116] Kallon testified further that while he did travel to Kenema for one day during the Indictment period to meet Bockarie, he did not visit Tongo Field. [1117] Moreover, Kallon testified that he did not visit Tongo Field until early 2001.[1118]

618. To corroborate his alibi, the Kallon Defence called various witnesses. DMK-039

[1108] Transcript of 11 April 2008, Morris Kallon, pp. 98-99.
[1109] Transcript of 21 April 2008, DMK-160, pp. 53, 72.
[1110] Transcript of 22 April 2008, DMK-161, p. 9.
[1111] Kallon Notification of Alibi, pp. 2-3.
[1112] Kallon Notification of Alibi, p. 3.
[1113] Transcript of 11 April 2008, Morris Kallon, p. 98.
[1114] Transcript of 11 April 2008, Morris Kallon, p. 99.
[1115] Transcript of 11 April 2008, Morris Kallon, pp. 99-100.
[1116] Transcript of 11 April 2008, Morris Kallon, pp. 108, 128.
[1117] Transcript of 14 April 2008, Morris Kallon, p. 107; Transcript of 18 April 2008, Morris Kallon, p. 37.
[1118] Transcript of 14 April 2008, Morris Kallon, p. 111.

testified that he saw Kallon in Kangari Hills on 25 May 1997.[1119] DMK-161 stated that Kallon left Makeni on 2 or 3 August 1997, and went to Bo, where he remained until the Intervention.[1120] Kallon's absence from Kenema at the time of the Intervention was also supported by several Prosecution witnesses, including TF1-071,[1121] TF1-125[1122] and TF1-367.[1123] DMK-047 also testified that he was personally at Tongo Field in Kenema District between May 1997 and February 1998 and did not see Kallon at that location.[1124]

5.9.2.3. Passing through Masiaka

619. In its Notification of Alibi, the Kallon Defence asserted that Kallon did not pass through Masiaka when retreating to Kono from Bo following the Intervention in mid-February 1998.[1125] Kallon testified that he passed through Mile 91 on his retreat from Bo after the Intervention in February 1998.[1126] The Kallon Defence asserted that Kallon took no part in "Operation Pay Yourself."[1127] Kallon said he did not pass through Masiaka because he was told by civilians that ECOMOG controlled the area and that they were arresting RUF personnel.[1128] The Kallon Defence called various witnesses who testified to Kallon's absence from Masiaka during the Intervention, including DMK -161,[1129] DMK-039,[1130] DMK-132[1131] and DMK-072.[1132]

5.9.2.4. Killings at Five-Five Spot

620. In its Notification of Alibi the Kallon Defence claimed that Kallon was on assignment at Kuyor on the Guinea Highway and was not present when civilians were killed at Five-Five Spot.[1133] At trial, Kallon testified that he had never been to Five-Five Spot and had not killed

[1119] Transcript of 25 April 2008, DMK-039, p. 20.
[1120] Transcript of 22 April 2008, DMK-161, p. 9.
[1121] Transcript of 26 January 2005, TF1-071, p. 20.
[1122] Transcript of 16 May 2005, TF1-125, p. 83.
[1123] Transcript of 26 June 2006, TF1-367, p. 22 (CS).
[1124] Transcript of 25 April 2008, DMK-047, pp. 54-55.
[1125] Kallon Notification of Alibi, p. 3.
[1126] Transcript of 11 April 2008, Morris Kallon, p. 130.
[1127] *See* Kallon Final Trial Brief, para. 1329.
[1128] Transcript of 11 April 2008, Morris Kallon, p. 131.
[1129] Transcript of 22 April 2008, DMK-161, p. 17.
[1130] Transcript of 25 April 2008, DMK-039, p. 23.
[1131] Transcript of 29 April 2008, DMK-132, p. 41.
[1132] Transcript of 1 May 2008, DMK-072, p. 102.
[1133] Kallon Notification of Alibi, p. 3.

three civilians who were suspected to be Kamajors.[1134] To corroborate his account, the Kallon Defence called DMK-161, who testified he knew nothing of the accusation that Kallon had killed civilians at Five-Five spot between 15 February and 30 June 1998.[1135] DMK-087, who stated that he was a G5 in Kono between March and June 1998 supported Kallon's claim, stating that he had not received any reports that Kallon had killed civilians at Five-Five Spot at any time.[1136]

5.9.2.5. Killings at Tombodu

621. In its Notification of Alibi the Kallon Defence claimed that Kallon was on assignment at Kuyor on the Guinea Highway and was not present at the killing of civilians at Tombodu.[1137] In his testimony, Kallon confirmed that he was on assignment at the Guinea Highway in 1998 and claimed that he could not therefore have killed civilians in Tombodu. To support his claim, the Kallon Defence called DMK-072, who testified that while he was in Tombodu from February to June 1998, he had not seen Kallon.[1138] DMK-161 was also called to testify, and stated that he had not heard that Kallon had killed civilians in Tombodu.[1139]

5.9.2.6. Gold Town Village

622. In its Notification of Alibi the Kallon Defence asserted that Kallon was on an ambush in Gold Town Village on or about 15 December 1998 and that he did not return to Kono until the beginning of January 1999.[1140]

5.9.2.7. UNAMSIL Counts

623. In its Notification of Alibi, Kallon testified that on 30 April 2000 one of his friends, Borbor Kanu,[1141] asked Kallon if he could borrow a stereo.[1142] Kallon told Kanu that he could borrow a stereo that belonged to TF1-041.[1143] Kallon delivered the stereo, and on 1 May 2000,

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[1134] Transcript of 14 April 2008, Morris Kallon, pp. 75, 85.
[1135] Transcript of 22 April 2008, DMK-161, p. 26.
[1136] Transcript of 24 April 2008, DMK-087, p. 3.
[1137] Kallon Notification of Alibi, p. 3.
[1138] Transcript of 1 May 2008, DMK-072, p. 106.
[1139] Transcript of 22 April 2008, DMK-161, p. 26.
[1140] Kallon Notification of Alibi, pp. 3-4.
[1141] Transcript of 15 April 2008, Morris Kallon, p. 66.
[1142] Transcript of 15 April 2008, Morris Kallon, p. 60.
[1143] Transcript of 15 April 2008, Morris Kallon, p. 64.

which was the following morning, while on his way back to Makeni, Kallon stopped at the Makump DDR Camp, between 9:00am and 11:00am.[1144]

624. Kallon testified that he was travelling in a Mercedes Benz car, with his driver, TF1-041 and Kallon's uncle and that they were all unarmed.[1145] Kallon stated that he stopped at the DDR camp because he wanted to greet the RUF Party ("RUF-P") Chairman Andrew Kanu, and other RUF-P workers.[1146] Kallon stated that he spoke briefly with the G5 mothers and told some of the workers that the beds they were making were not meant for pigs, but for humans. He then immediately left the camp.[1147] Kallon further testified that he did not see any Military Observers or combatants at the camp, but only a few National Committee for Disarmament, Demobilisation and Reintegration ("NCDDR") workers.[1148] Kallon stated that he did not know whether any RUF combatants had come to disarm and did not confront anyone about RUF disarmament.[1149] Furthermore, Kallon stated that he did not come into contact with the UNAMSIL Commander at the camp.[1150]

625. Upon arrival in Makeni, Kallon testified that he went to Kailondo's office at Independence Square, where a large crowd had gathered.[1151] Kallon said he had taken TF1-041 to his office where he noticed that a radio was being operated by Philip Sanu. Kallon claimed that he did not enter the office.[1152] Some time later, Kallon claims to have seen Kailondo, bare-chested and intoxicated, surrounded by combatants, and shouting "he will not take this".[1153] Subsequently, Kallon testified that Kailondo, who was angry and armed, approached him. Kallon, who was unarmed and worried that there might a commotion, returned to his car and departed for Magburaka, and claims that he did not stop at the DDR Camp during the journey.[1154] On the return leg, Kallon said he was still accompanied by his driver and his uncle. Kallon stated that he neither saw any disarmed RUF combatants, nor a crowd, at the DDR Reception Centre. Kallon stated that he left Makeni at 11:00am and did not return on 1 May

[1144] Transcript of 15 April 2008, Morris Kallon, pp. 60-61.
[1145] Transcript of 15 April 2008, Morris Kallon, pp. 61-62.
[1146] Transcript of 15 April 2008, Morris Kallon, p. 60.
[1147] Transcript of 15 April 2008, Morris Kallon, pp. 62-64.
[1148] Transcript of 15 April 2008, Morris Kallon, pp. 63-64.
[1149] Transcript of 15 April 2008, Morris Kallon, p. 63.
[1150] Transcript of 18 April 2008, Morris Kallon, p. 122.
[1151] Transcript of 15 April 2008, Morris Kallon, p. 65.
[1152] Transcript of 15 April 2008, Morris Kallon, p. 67.
[1153] Transcript of 15 April 2008, Morris Kallon, pp. 65, 67.

2000.[1155] Kallon testified that he did not approach any MILOBs or UNAMSIL personnel with a gun on this date.[1156]

626. Kallon testified that later that day he was told by a Vanguard named Colonel Pepe that UNAMSIL had attacked the RUF.[1157] Knowing that there would be a problem, Kallon drove his family to Masingbi the same day to ensure their safety.[1158]

627. Kallon testified that on 2 May 2000, he returned to Magburaka without visiting Makeni.[1159] By this date, Kallon believed that Kailondo and Komba Gbundema had attacked the peacekeepers on the orders of Sankoh. [1160] Kallon denied having taken part in the attack of UNAMSIL peacekeepers at Makoth on that day.[1161] Kallon further denied using a radio to send a message concerning the attacks on UNAMSIL peacekeepers.[1162]

628. Kallon denied that he had attacked UNAMSIL peacekeepers at Makoth on 3 May 2000.[1163] Kallon claimed he went to Teko Barracks where he met Sesay.[1164] Kallon claimed that he had remained in Makeni to as he thought that many of the RUF subordinates were becoming unruly and he wanted to prevent looting.[1165]

629. In support of his testimony and alibi, the Kallon Defence called the following witnesses to corroborate his story. DMK-082 testified that Kallon lived in Masingbi until 2002, and that on 1 and 2 May 2000, Kallon and the witness were together in Masingbi.[1166] DMK-108 was at Makump and testified that Kallon was not involved in the incident that took place there on 1 May 2000.[1167] DMK-032 also testified that it was Kailondo and not Kallon who went to the Makump DDR camp.[1168] DMK-095 corroborated Kallon's account of events stating that he had

[1154] Transcript of 15 April 2008, Morris Kallon, pp. 65-66.
[1155] Transcript of 17 April 2008, Morris Kallon, p. 114.
[1156] Transcript of 15 April 2008, Morris Kallon, pp. 86-87.
[1157] Transcript of 15 April 2008, Morris Kallon, p. 66.
[1158] Transcript of 15 April 2008, Morris Kallon, p. 66.
[1159] Transcript of 15 April 2008, Morris Kallon, p. 67.
[1160] Transcript of 17 April 2008, Morris Kallon, p. 116.
[1161] Transcript of 15 April 2008, Morris Kallon, p. 69.
[1162] Transcript of 15 April 2008, Morris Kallon, p. 85.
[1163] Transcript of 15 April 2008, Morris Kallon, p. 69.
[1164] Transcript of 15 April 2008, Morris Kallon, pp. 69-70.
[1165] Transcript of 15 April 2008, Morris Kallon, p. 72.
[1166] Transcript of 13 May 2008, DMK-082, pp. 15-16, 20-21, 43.
[1167] Transcript of 29 April 2008, DMK-108, pp. 67-69.
[1168] Transcript of 6 May 2008, DMK-032, pp. 38-39.

spoken briefly to Kallon on 1 May 2000, and that Kallon was not involved in any of the other events at Makump or with UNAMSIL peacekeepers.[1169] Finally, according to Kallon, TF1-041 corroborated much of Kallon's recollection of the events that had taken place on the morning of 1 May 2000.

5.9.3. Alibi: Prosecution's Submissions

630. The Prosecution asserts that the Kallon alibi claim should be disregarded because the Kallon Defence failed to adequately abide by Rule 67(A)(ii).[1170] The Prosecution argues that the Kallon Defence initially failed to properly disclose the alibi evidence.[1171] The Kallon Defence only called two of its listed witnesses who would testify to the alibi, and called witnesses who were not in the alibi notification.[1172] Moreover, the Kallon Defence called witnesses who testified to different dates and events than those listed in the alibi notification.[1173] Finally, the Prosecution asserts that one witness, DMK-082, admitted to lying in court under oath and is entirely unreliable. The Prosecution submits that his evidence should be dismissed in its entirety.[1174] In sum, the Prosecution's position is that the alibi defence is without merit and should be dismissed.[1175]

5.9.4. Alibi: Findings

631. The Chamber notes that not all of Kallon's claims in support of his "alibi" actually constitute an alibi defence. An alibi involves two components: evidence that an individual was not at a particular place; and evidence of where that individual was located.[1176] For some of the alibi claims discussed below, evidence was adduced that Kallon was absent from an alleged location. However, evidence was not adduced to demonstrate that he was in a different or particular location indicated with precision. In the Chamber's view, this amounts only to a denial of Kallon's presence during certain events, rather than a true claim of alibi. Accordingly, although the Chamber has analyzed the entirety of Kallon's alibi claim, it considers that the

[1169] Transcript of 1 May 2008, DMK-095, pp. 39-43.
[1170] Prosecution Final Trial Brief, para. 86.
[1171] Prosecution Final Trial Brief, para. 86.
[1172] Prosecution Final Trial Brief, paras 86-87.
[1173] Prosecution Final Trial Brief, para. 1219.
[1174] Prosecution Final Trial Brief, para. 1219.
[1175] Prosecution Final Trial Brief, paras 86-87, 1219.
[1176] *Prosecutor v. Musema*, ICTR 96-13-A, Judgment (AC), 16 November 2001, paras 205-206; *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, ICTR 99-52-T, Judgment (TC), 3 December 2003, para. 99.

submissions generally considered neither credibly support nor sustain an alibi defence.

632. The Kallon Defence has vacillated between whether it would or whether it would not use an alibi defence. It did not raise an alibi claim before trial or during the Prosecution case. Despite the late invocation of the alibi however, the Chamber has accepted the Notice of Alibi and has fully considered the merits of the Kallon alibi evidence. In any event, the fact the Kallon Defence waited until the end of the Prosecution case before invoking its alibi significantly impacts on the weight that the Chamber is prepared to attach to it. This is in part due to the fact that a late invocation of a defence of alibi undermined the Prosecution's ability to properly prepare its case and to fully examine the evidence on which the alibi is based.[1177]

633. Moreover, the Chamber finds that in several instances, it appears that the Kallon Defence has moulded its alibi to fit the case for the Prosecution as it was presented. As an example, the Chamber notes that the evidence of TF1-041 was not specific as to the date on which Kallon went to the DDR camp and made the statement that the "beds were not meant for pigs". He testified only that it happened at the beginning of May 2000.[1178] Kallon relied upon vagueness concerning the date in his testimony to claim that TF1-041's testimony corroborates his alibi for 1 May 2000. However, the Chamber has found, in light of other evidence, that the incident described by TF1-041 did not occur on 1 May 2000, but on 28 April 2000, and that Kallon used evidence of an entirely different event to support his alibi claims.

634. The Chamber has evaluated Kallon's specific alibi claims with these considerations in mind.

5.9.4.1. Bo

635. The Chamber finds that there is no evidence to support an alibi for the Accused in Bo. The evidence of DMK-160 is to the effect that he did not know Kallon at the time and therefore could neither testify to his presence nor lack of it in Bo at the relevant time in 1997. DMK-161 also gave contradictory evidence, testifying that Kallon was both in Bo and in Makeni during the relevant period. The Chamber therefore finds that there is no reasonable

[1177] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67, 26 July 2006, para. 18.

possibility that the alibi can be considered as true.

5.9.4.2. Kenema

636. The evidence concerning the presence of Kallon in Kenema at the relevant time is inconclusive. Consequently, the Chamber is of the view that there is no reasonable possibility that his alibi is true. The answer to the question as to whether Kallon was in Kenema during the relevant period is therefore dependent on the credibility of the witnesses who have testified to this effect.

5.9.4.3. Masiaka

637. The Chamber is of the view that this claim of alibi is false, in that the witnesses testified that Kallon was not in Masiaka, and did not exactly and precisely indicate his location. The evidence presented by the Prosecution and accepted by the Chamber, leads us to conclude that the evidence presented by the Kallon Defence does not establish the presence of Kallon in Masiaka at this particular time. We therefore decline to address the evidence of the witnesses called in support of the "alibi".

5.9.4.4. Five-Five Spot and Tombodu

638. The Chamber finds that the alibi claims for the period of time when the killings at Five-Five Spot and Tombodu took place are not substantiated. The Chamber notes that the witnesses called by Kallon merely stated that they had no knowledge concerning the involvement of Kallon in the commission of these crimes.

5.9.4.5. Gold Town

639. Kallon's presence at Gold Town was not discussed during the trial proceedings. However, Kallon claims that he was not in Gold Town in mid-December 1998. On the basis of evidence that Sesay ordered Kallon to attack Gold Town during the campaign to retake Koidu in mid-December 1998, the Chamber is satisfied that Kallon was present there at that time and rejects his alibi.[1179]

[1178] Transcript of 10 July 2006, TF1-041, p. 69 (CS).
[1179] Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, dated 27 September 1999, p. 2352.

5.9.4.6. UNAMSIL

640. The alibi evidence the Kallon Defence presented regarding Counts 15 to 18 is the crux of his alibi claim. The Chamber has carefully considered the evidence presented both in support of and contradictory to Kallon's alibi claims and considers the testimony given by witnesses called by the Kallon Defence with regard to the UNAMSIL counts, to be confused and inconsistent, and thus implausible. At the time of the abduction of the UNAMSIL peacekeepers, Kallon was a Battle Ground Commander, the highest ranking RUF officer in the Makeni area, and second only in rank to Sesay.[1180] Considering his rank, the Chamber finds that the alibi evidence for 1, 2 and 3 May 2000 is not, by any stretch of the imagination, convincing. Accordingly, we do not accept its validity.

641. The Chamber believes that it has been fully established that before the abduction of the UNAMSIL peacekeepers, Kallon had been well aware that the DDR process which had been initiated, was experiencing some problems, and was contested by the RUF hierarchy including Kallon himself.

642. On 16 April 2000, Sankoh had, earlier before the UNAMSIL 1 May incident, contacted Kallon via radio and told him not to allow anyone to "fool him" in relation to the DDR programme. Sankoh ordered that there was to be no further disarmament in Kallon's area until he instructed otherwise. He concluded by telling Kallon that if there were "any mistake toward implementing [this order], you will be responsible."[1181]

643. Considering his high rank in the RUF, the Chamber finds it extremely incredible and unlikely that Kallon would flee with his family after hearing of an attack on UNAMSIL. Similarly, the Chamber finds it difficult to believe that on 2 May 2000, after hearing about the attack on the Makump DDR Camp, Kallon had a bath and spent the day drinking palm wine at the house of DMK-162.[1182] The Chamber finds that this is evidence manifestly untrue and unreliable and inconsistent with the evidence it has accepted about the operation of the RUF, and, in particularly, the conduct of its highest ranking members in relation to the UNAMSIL incident. The Chamber therefore considers that this aspect of Kallon's alibi is incredible as his

[1180] *Infra* para. 930.
[1181] Exhibit 33, RUF Radio Log Book, p. 8896.
[1182] Transcript of 13 May 2008, DMK-082, pp. 16, 44.

alleged attitude towards this very serious event is incompatible with that of a senior officer of his rank, acting on the instructions received from his boss and leader Sankoh and the command position he held within the RUF at that time.

644. In addition, the Chamber considers that the testimony given by the UNAMSIL peacekeepers, was generally credible. The peacekeepers gave coherent, logical accounts of the events that took place during early May. In considering the testimony of the UNAMSIL peacekeepers, the Chamber found them to be truthful and genuine in their efforts to assist the Court to ascertain the truth. The Chamber also noted that they had no vested interest in the outcome of the trial. Accordingly, the Chamber gives more probative value to the evidence of the UNAMSIL peacekeepers regarding these events than to the testimony of Kallon and the witnesses called by the Kallon Defence.

645. The Chamber is therefore of the view that the Prosecution has successfully shown the alibi claim of Kallon to be false. It therefore rejects Kallon's alibi as it relates to the UNAMSIL counts as legally untenable.

5.9.5. Conclusion on Kallon's Alibi

646. The Chamber is mindful that although in many cases it has found that Kallon's alibi is not reasonably possibly true, this does not in and of itself establish Kallon's liability for the crimes alleged. The Prosecution still has the burden of establishing beyond reasonable doubt Kallon's guilt as alleged in the Indictment.

647. Finally, the Chamber wishes to reiterate that, regardless of any evidence presented in defence of the Accused persons and the weight the Chamber has attached to such evidence, it is the Prosecution that bears the burden of proving, beyond reasonable doubt, the charges against the Accused.

VI. FACTUAL AND LEGAL FINDINGS

1. The RUF Organisation and the AFRC/RUF Relationship

1.1. Overview of the RUF Organisation

1.1.1. Introduction

648. As a guerrilla army and an irregular force, the RUF relied on portable weapons and a high degree of mobility for its military success. Nonetheless, key aspects of its organisation resembled those of a conventional military army. The RUF used the military system of ranks and had a hierarchical command structure[1183] which was supported by a rudimentary staff system.[1184]

649. In addition to ranks, the RUF had a system of assignments or appointments and a hierarchy of status among their fighters depending on where they were trained. These criteria determined in large part the respect and obedience to which a Commander was entitled and were critical to his/her ability to control troops. The RUF command structure was thus polycentric, in that a Commander's importance and his power and authority over troops were derived from a combination of multiple recognised sources.

650. Between 1996 and 2000, the composition of the RUF organisation and the roles of its Commanders varied depending on where and how military operations were being conducted and also, to a significant extent, on changing allegiances amongst its leadership.[1185] The RUF command structure differed during the Junta period, for instance, when it shared power with the AFRC in Freetown to when it launched a campaign to recapture Kono District and Makeni in late 1998.[1186] As most of Kailahun District remained under the territorial control of the RUF throughout the Indictment period, the RUF fighters in that area were organised differently from those at the frontlines or in newly captured territory. As the RUF's stronghold,

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[1183] Transcript of 20 October 2004, George Johnson, pp. 7-8; Transcript of 14 July 2005, TF1-361, p. 25 (CS); Transcript of 20 July 2005, TF1-360, p. 3 (CS); Transcript of 27 July 2005, TF1-036, p. 24 (CS); Exhibit 389, Military Report Johan Hederstedt, pp. 26772, 26776.

[1184] Transcript of 21 January 2005, TF1-071, p. 12; Transcript of 25 April 2005, TF1-362, p. 56 (CS); Transcript of 23 March 2006, TF1-288, p. 77; Transcript of 31 March 2006, TF1-168, pp. 92-93 (CS); Transcript of 1 August 2006, TF1-371, p. 115 (CS).

[1185] Exhibit 389, Military Report Johan Hederstedt, p. 26772.

Kailahun District was organised in more static way, combining a territorial defence capability with an organised rebel administration encompassing military, police and civilian functions.[1187]

1.1.2. The RUF Ideology

651. Foday Sankoh was the driving force behind the RUF movement and shaped its political and military ideology.[1188] The RUF documented its ideological goals and political objectives and disseminated them to its recruits.[1189] The RUF agenda fixed the aims and objectives which the RUF sought to achieve and the means they had to employ to attain them. The agenda was the ideology of the RUF movement. It was documented and printed matter and set out the said objectives. The political ideology of the RUF was an integral component of the movement[1190] and comprised a key aspect of the training for RUF fighters at Camp Naama in Liberia in the early years of the movement.[1191]

652. A crucial aspect of the political ideology of the RUF was the acceptability of taking up arms to further the goals of its revolution.[1192] The ideology consisted in "the use of weapons to seek total redemption"; "to organise themselves and for a sort of People's Army"; "to procure arms for a broad-based struggle so that the rotten and selfish government is toppled".[1193] The RUF claimed to be fighting to overthrow a corrupt military Government in order to realise the right of every Sierra Leonean to true democracy and fair governance.[1194] Nonetheless, when democratic elections were held in 1996 the RUF boycotted the ballot box and continued active

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[1186] *See*, for example, Transcript of 22 July 2005, TF1-360, p. 29.
[1187] Exhibit 389, Military Report Johan Hederstedt, p. 26772.
[1188] Consequential Order on Judicial Notice, Annex I, Fact J; Transcript of 20 July 2006, TF1-371, p. 21 (CS); Transcript of 11 April 2008, Morris Kallon, p. 53; Transcript of 21 April 2008, DMK-161, p. 120.
[1189] *See* Exhibit 38, RUF Training Manual; Exhibit 273, RUF Ideology School Record, p. 31041; Transcript of 20 July 2006, TF1-371, pp. 21-22 (CS); Transcript of 24 July 2006, TF1-371, p. 66 (CS).
[1190] Transcript of 24 January 2005, TF1-071, pp. 25, 27; Transcript of 20 July 2006, TF1-371, pp. 21-22 (CS); Transcript of 3 April 2006, TF1-168, p. 9 (CS); Transcript of 22 April 2005, TF1-362, p. 65 (CS); Transcript of 6 June 2008, DAG-080, pp. 5-6; Transcript of 26 November 2007, DIS-128, pp. 95-96.
[1191] Transcript of 24 July 2006, TF1-371, p. 68 (CS).
[1192] Exhibit 38, RUF Training Manual, p. 11076, noting that arms and ammunition are the number one pillar of the RUF movement; Exhibit 367, Document with Information on Aims of the RUF, p. 5; Transcript of 3 May 2007, Issa Sesay, p. 78; Transcript of 28 July 2005, TF1-036, p. 14 CS); Transcript of 13 November 2007, DIS-281, p. 13 (CS). *See also* Transcript of 19 October 2007, DIS-069, p. 50.
[1193] Exhibit 38, RUF Training Manual; Exhibit 367, Document with Information on Aims of the RUF; Exhibit 273, RUF Ideology School Record.
[1194] Transcript of 24 July 2006, TF1-371, p. 66 (CS); Transcript of 19 October 2007, DIS-069, p. 49; Transcript of 22 April 2005, TF1-362, p. 67 (CS); Transcript of 29 October 2007, DIS-188, p. 75 (CS).

hostilities.[1195]

653. Sankoh labelled the RUF revolution as a struggle of self-reliance, meaning that the people of Sierra Leone were the owners of the revolution. RUF fighters were told that if the Sierra Leonean people did not accept Sankoh's vision of a new society achieved through armed liberation, then the revolution would fail.[1196]

654. A critical pillar of the ideology was thus the notion that the people of Sierra Leone were tasked with helping the revolution succeed. It was common practice for the RUF, upon capturing a village, to conscript its civilians, including children, into the ranks of the fighting forces.[1197] Accordingly, despite the ideological focus on the revolution as the embodiment of the will of the people, there was often no alternative to accepting the RUF ideology: civilians who did not support the movement were perceived as enemies and therefore legitimate targets.[1198] It is notable in this respect that many of the senior members of the RUF were originally forced recruits, including Sesay, Kallon and Gbao.[1199]

655. Throughout the armed conflict, the RUF operated various training bases in Sierra Leone where new volunteers and forced recruits were indoctrinated. Some recruits spent prolonged periods of time rigorously studying the RUF ideology and focusing on the political aspects of the movement, including the need for revolution and the aims thereof.[1200] It appears that most others, however, received scant ideological training and were unaware of the proclaimed basic objectives of the RUF movement.[1201]

656. The RUF's military ideology consisted of various sets of rules and principles, not all of

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[1195] Exhibit 174, Human Rights Watch, *Murder*; Exhibit 181, NPWJ Conflict Mapping Report, pp. 22, 28-29; Transcript of 29 February 2008, DIS-89, p. 2; Transcript of 16 May 2008, Tejan Kabbah, pp. 7-8.
[1196] Transcript of 3 May 2007, Issa Sesay, p. 86.
[1197] Transcript of 4 October 2004, General John Tarnue, pp. 62, 106-107, 111-113, 120.
[1198] Exhibit 367, Document with Information on Aims of the RUF, p. 4; Transcript of 4 October 2004, General John Tarnue, p. 106; Transcript of 29 July 2005, TF1-036, p. 6 (CS).
[1199] Transcript of 29 July 2005, TF1-036, p. 6 (CS); Transcript of 3 May 2007, Issa Hassan Sesay, p. 49.
[1200] Transcript of 19 October 2007, DIS-069, p. 49; Transcript of 6 June 2008, DAG-080, p. 5; Transcript of 20 July 2006, TF1-371, pp. 21-22 (CS); Transcript of 21 April 2005, TF1-362, p. 68 (CS); Transcript of 24 January 2005, TF1-071, p. 25; Transcript of 26 November 2007, DIS-128, pp. 95-96.
[1201] Transcript of 18 April 2005, TF1-141, p. 86; Transcript of 22 April 2005, TF1-362, p. 72 (CS); Transcript of 29 April 2005, TF1-060, p. 14. Transcript of 25 April 2005, TF1-362, p. 3 (CS); Transcript of 22 April 2005, TF1-362, pp. 68-69 (CS); Transcript of 24 July 2006, TF1-371, p. 80 (CS); Transcript of 6 November 2007, DIS-149, p. 13. There is also evidence that the emphasis on ideology training was revived in periods when the RUF participated in peace negotiations: Transcript of 24 July 2006, TF1-371, p. 79 (CS).

which were equally well-known, that governed the conduct of military operations in Sierra Leone, focusing on the behaviour of fighters toward civilians and the importance of discipline and respect for superior orders.[1202] The Chamber has considered the military ideology in further detail in its findings on the disciplinary system within the RUF.[1203] The ideology assisted in maintaining the cohesion of the RUF and was a driving force in the pursuance of the objectives and the goals of the revolution to eventually take control of the people and the territory of Sierra Leone.

1.1.3. The Operational Command Structure

1.1.3.1. Assignments/Appointments[1204]

657. The most senior assignments in the RUF movement were the Leader, the Battle Field Commander ("BFC") and the Battle Group Commander ("BGC").[1205] This *trias* was the centre of the military power and control of the RUF and together formed the core of the RUF "High Command." Subordinate to these senior Commanders there was a system of appointments of both operational and staff Commanders whose responsibilities generally corresponded to a particular geographical area of control.

1.1.3.1.1. The Leader

658. Foday Sankoh, a former SLA Corporal and radio operator, was the *de jure* and *de facto*

[1202] Exhibit 273, the RUF Ideology School Record, refers to the Eleven General Orders, the Eight Codes of Conduct, the Eleven Principles of Leadership and the Three Discipline Factors. In respect of discipline and superior orders, *see* RUF Internal Document, p. 4; Transcript of 27 July 2005, TF1-036, p. 38 (CS); Transcript of 14 April 2008, Morris Kallon, pp. 4-5; Exhibit 38, RUF Training Manual, p. 11071; Exhibit 273, RUF Ideology School Record, pp. 31042, 31047. *See also* testimony of Kallon in relation to the 'Twenty-five Standing Orders of the RUF': Transcript of 11 April 2008, Morris Kallon, p. 56; Exhibit 339, Kallon's Notebook Containing RUF General and Standing Orders, pp. 25405-25410.

[1203] *Infra* paras 706-712.

[1204] The Chamber notes that witnesses tended to use the terms "assignment" and "appointment" generically to describe the process by which Commanders were given positions in the RUF organisation. We are satisfied that in the context of the RUF, there is no significant distinction between the two terms and we have used them interchangeably.

[1205] Transcript of 4 May 2007, Issa Sesay, p. 112; Transcript of 26 October 2007, DIS-188, p. 19 (CS); Transcript of 9 June 2008, DAG-080, p. 3; Transcript of 29 July 2005, TF1-036, pp. 67-68 (CS); Transcript of 31 January 2005, TF1-015, p. 77 (CS); Transcript of 19 July 2005, TF1-361, p. 4 (CS); Transcript of 28 July 2005, TF1-036, p. 11 (CS); Transcript of 16 November 2005, TF1-366, pp. 18-19 (CS); Transcript of 26 October 2007, DIS-188, pp. 9-10 (CS); Exhibit 389, Military Report Johan Hederstedt, pp. 25, 43-44; The position of Battle Field Commander is occasionally referred to as Battle Front Commander. These are simply different names for the same position: *see* Transcript of 9 June 2008, DAG-080, p. 30.

Leader of the RUF[1206] from the commencement of hostilities in 1991 until his arrest in Nigeria in February 1997. Sankoh was also referred to as the Commander-in-Chief.[1207] As the Leader of the movement Sankoh had paramount responsibility over all activities within the RUF and determined its political and military goals.[1208] Sankoh was at times authoritarian, if not dictatorial.[1209]

659. Shortly after Sankoh's arrest in Nigeria in February 1997, Bockarie replaced him as the *de facto* Leader. Sankoh, however, remained capable of communicating with his subordinates and giving directions and orders until he was transferred by the Nigerian authorities to the Sierra Leone Government in September 1998.[1210]

660. After his incarceration on treason charges in Sierra Leone in October 1998, Sankoh later resumed his role as Leader following the Lomé Peace Accord in July 1999. As Bockarie had left the RUF for Liberia in December 1999,[1211] Sesay as BFC became the RUF top military Commander. In late July 2000, after Sankoh's re-arrest and incarceration on new charges by the Sierra Leone Government, Sesay became the Leader of the RUF movement. He remained in this position for the remainder of the Indictment period.[1212]

1.1.3.1.2. Battle Field Commander

661. The Battle Field Commander was the Leader's second-in-command. The BFC was responsible for planning and executing military operations, inspecting the front line and ensuring the welfare of the fighters there.[1213] The BFC received instructions from the Leader and was superior to the Commanders of combat and staff units.[1214]

1.1.3.1.3. Battle Group Commander

662. In the RUF military structure the Battle Group Commander functioned *de facto* as

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[1206] Consequential Order on Judicial Notice, Annex I, Facts J and R.
[1207] Transcript of 26 October 2007, DIS-188, p. 51 (CS); Transcript of 31 July 2006, TF1-371, p. 23 (CS).
[1208] Exhibit 389, Military Report Johan Hederstedt, p. 25.
[1209] Transcript of 28 July 2006, TF1-371, p. 68 (CS).
[1210] Transcript of 4 May 2007, Issa Sesay, pp. 64-65.
[1211] Transcript of 3 July 2006, TF1-117, pp. 42-43.
[1212] *Infra* paras 916-917.
[1213] Transcript of 26 October 2007, DIS-188, p. 19 (CS).
[1214] Exhibit 389, Military Report Johan Hederstedt, p. 25; Transcript of 21 January 2005, TF1-071, p. 5; Transcript of 4 May 2007, Issa Sesay, p. 112; Transcript of 26 October 2007, DIS-188, p. 19 (CS).

third-in-command of the RUF and second-in-command to the BFC.[1215] The BGC was responsible for the welfare of all members of the RUF, both civilians and fighters, and for all the internal affairs of the RUF.[1216] The BGC reported to the BFC.

1.1.3.1.4. Battle Front Inspector

663. There was also a Battle Front Inspector ("BFI") as part of the superior echelon of the RUF military structure. The BFI moved around the various battle fronts, attended to the problems of the fighters and generally ensured the smooth conduct of operations at the front line, for instance by arranging for reinforcements where necessary.[1217] The position commanded high authority, respect and prestige but it did not correspond to fourth-in-command in the RUF hierarchy. The BFI did not typically command a defined unit of fighters but rather functioned more as a special assistant to the BFC.[1218] The BFI was generally only active in periods in which the RUF was engaged in combat operations; otherwise the assignment lay dormant.[1219]

1.1.3.1.5. Area/Brigade Commanders

664. Prior to 1998, the RUF forces were organised into brigades of fighters under Area Commanders for particular geographical areas who reported to the BGC. The Area Commanders were also responsible for passing orders to Battalion Commanders.[1220] All RUF members within an area fell under the authority of the local Area Commander.[1221]

665. For a period of time there was an intermediary between the Area Commander and the

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[1215] Exhibit 389, Military Report Johan Hederstedt, p. 25; Transcript of 21 January 2005, TF1-071, p. 5; Transcript of 4 May 2007, Issa Sesay, p. 112; Transcript of 26 October 2007, DIS-188, p. 19 (CS).
[1216] Transcript of 21 January 2005, TF1-071, p. 5; Transcript of 22 October 2007, DIS-069, pp. 71-72; Transcript of 26 October 2007, DIS-188, p. 20.
[1217] Transcript of 23 November 2007, DIS-124, p. 44; Transcript of 26 July 2005, TF1-360, p. 28 (CS); Transcript of 22 May 2007, Issa Sesay, p. 39; Transcript of 3 June 2008, DAG-048, p. 39; Transcript of 22 October 2007, DIS-069, pp. 101-02. Witnesses also referred to the Battle Field Inspector. The Chamber is satisfied that this title refers to the same assignment.
[1218] Transcript of 27 January 2005, TF1-071, p. 77.
[1219] Transcript of 23 May 2007, Issa Sesay, p. 20.
[1220] Transcript of 28 July 2005, TF1-036, p. 12 (CS); Transcript of 26 June 2006, TF1-367, p. 44 (CS); Transcript of 11 July 2006, TF1-296, p. 18 (CS); Transcript of 5 November 2007, DIS-149, p. 87.
[1221] Transcript of 9 June 2008, DAG-101, p. 117.

various Battalion Commanders, called the Brigade Commander.[1222] However, following the overthrow of the AFRC/RUF Junta Government in mid-February 1998, Bockarie restructured the RUF and merged the assignments of Area Commander and Brigade Commander into a single position.[1223] The assignment became known as the Brigade Commander, who was essentially the most senior operational Commander below the BGC in a particular area. Below the Brigade Commander, the RUF troops were divided into Battalions, Companies, Platoons, Groups, Squads and Teams.[1224]

1.1.3.2. Status

666. An individual's status was extremely important in the RUF and was dictated by the location where that person was trained. The highest status was afforded to members of the Special Forces, who were among the earliest members of the movement. The Special Forces were trained in Libya and subsequently established themselves at Camp Naama in Bong County, Liberia, which served as the first training ground for the RUF.[1225] The RUF worked there in conjunction with Charles Taylor and his National Patriotic Front of Liberia ("NPFL").[1226] Foday Sankoh had the status of Special Forces, along with Rashid Mansaray,

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[1222] Transcript of 28 July 2005, TF1-036, p. 12 (CS); Transcript of 3 August 2005, TF1-036, p. 74 (CS); *see also* Transcript of 26 June 2006, TF1-367, pp. 44, 65 (CS); Transcript of 26 October 2007, DIS-188, p. 9 (CS); Transcript of 5 November 2007, DIS-149, pp. 85-86.

[1223] Transcript of 17 July 2006, TF1-371, p. 61 (CS); Transcript of 17 July 2006, TF1-041, p. 61 (CS); Transcript of 29 October 2007, DIS-188, pp. 38-39 (CS); Transcript of 22 January 2008, DIS-174, p. 7 (CS); Transcript of 6 June 2008, DIS-080, p. 25.

[1224] Exhibit 273, RUF Ideology Book, p. 31049. The Chamber notes that some witnesses (including RUF members of long standing) occasionally used the term 'Area Commander' interchangeably with Brigade Commander: *see*, for example, Transcript of 20 July 2006, TF1-371, p. 61. The Chamber is satisfied that over time 'Brigade Commander' became the accepted terminology. This is evidence from Exhibit 212, which is an RUF Radio Log Book containing numerous messages, transmitted between April and August 2000, referring regularly to Brigade Commanders. These messages also demonstrate the functioning of the chain of command, with the RUF Brigade Commander giving instructions to Battalion Commanders. There are also numerous messages between the BGC and Brigade Commanders and Battalion Commanders.

[1225] Transcript of 4 October 2004, General John Tarnue, p. 98; Transcript of 7 October 2004, General John Tarnue, p. 148; Transcript of 19 July 2005, TF1-360, p. 97 (CS); Transcript of 3 May 2007, Issa Sesay, p. 57; Transcript of 18 July 2005, TF1-361, p. 119 (CS); Transcript of 8 November 2005, TF1-366, p. 84 (CS); Transcript of 27 July 2005, TF1-036, p. 26 (CS); Transcript of 24 November 2005, TF1-045, p. 88 (CS); Transcript of 24 January 2005, TF1-071, p. 21; Transcript of 31 March 2006, TF1-168, pp. 44-45 (CS); Transcript of 20 July 2006, TF1-371, pp. 20-21 (CS).

[1226] Transcript of 24 January 2005, TF1-071, pp. 21-22; Transcript of 25 April 2005, TF1-362, p. 49 (CS); Transcript of 27 July 2005, TF1-036, pp. 28-29 (CS); Transcript of 31 March 2006, TF1-168, pp. 44-45 (CS); Transcript of 20 July 2006, TF1-371, p. 22 (CS); Transcript of 3 May 2007, Issa Sesay, pp. 44-45; Transcript of 18 April 2008, Morris Kallon, p. 2.

Mohamed Tarawallie, Patrick Lamin and Charles Taylor.[1227]

667. After the Special Forces, the second highest in status were the Vanguards, who were trained by the Special Forces at Camp Naama.[1228] Vanguards were co-equals amongst themselves.[1229] Vanguards were recognised as senior officers and military advisors to Junior Commanders, who were fighters of the lowest status trained by the RUF inside Sierra Leone.[1230] Junior Commanders were all individuals who volunteered or were captured by the RUF and trained throughout the war.[1231] A Vanguard could accordingly instruct a Junior Commander not to permit his men to engage in certain activities, even where the Vanguard was not formally assigned as the Junior Commander's superior. However, a Vanguard could not obstruct the orders or activities of a fellow Vanguard.[1232]

668. Vanguards included Mike Lamin, Sesay, Kallon, Gbao, Bockarie, Kailondo, CO Rocky, Monica Pearson, Isaac Mongor, Peter Vandi and RUF Rambo.[1233] Certain senior assignments were only entrusted to Vanguards.[1234]

669. The Chamber finds that Vanguards, due to their status, were accorded at all times respect and authority within the RUF organisation, particularly by the Junior Commanders.

[1227] Transcript of 27 July 2005, TF1-036, pp. 26-27 (CS); Transcript of 19 July 2005, TF1-360, pp. 97-98 (CS); Transcript of 7 October 2004, General John Tarnue, p. 99; Transcript of 8 November 2005, TF1-366, p. 84 (CS); Transcript of 24 November 2005, TF1-045, p. 88 (CS); Transcript of 3 April 2006, TF1-168, p. 10 (CS); Transcript of 18 July 2005, TF1-361, p. 119 (CS).

[1228] Transcript of 18 July 2005, TF1-361, p. 119 (CS); Transcript of 3 May 2007, Issa Sesay, p. 57; Transcript of 25 April 2005, TF1-362, p. 49 (CS); Transcript of 8 November 2005, TF1-366, p. 84 (CS); Transcript of 27 July 2005, TF1-036, p. 30 (CS).

[1229] Transcript of 29 July 2005, TF1-036, p. 13 (CS); Transcript of 12 July 2005, TF1-361, pp. 11-12 (CS); Transcript of 29 October 2007, DIS-188, p. 27 (CS); Transcript of 17 April 2008, Morris Kallon, pp. 18-19.

[1230] Transcript of 29 July 2005, TF1-036, p. 13 (CS); Transcript of 12 July 2005, TF1-361, pp. 11-12 (CS); Transcript of 29 October 2007, DIS-188, p. 27 (CS); Transcript of 17 April 2008, Morris Kallon, pp. 18-19.

[1231] Transcript of 3 May 2007, Issa Sesay, p. 57; Transcript of 12 July 2005, TF1-361, p. 12 (CS); Transcript of 8 November 2005, TF1-366, p. 84 (CS); Transcript of 19 July 2005, TF1-360, pp. 98-99 (CS); Transcript of 6 March 2006, TF1-113, p. 50 (CS); Transcript of 18 April 2008, Morris Kallon, p. 70.

[1232] Transcript of 18 April 2008, Morris Kallon, pp. 68-70; Transcript of 29 October 2007, DIS-188, p. 27 (CS).

[1233] Transcript of 21 April 2008, Morris Kallon, p. 25; Transcript of 8 May 2007, Issa Sesay, p. 25; Transcript of 22 April 2005, TF1-362, p. 88 (CS); Transcript of 13 July 2005, TF1-361, p. 11 (CS); Transcript of 18 July 2005, TF1-361, p. 9 (CS); Transcript of 19 July 2005, TF1-360, p. 104 (CS); Transcript of 8 November 2005, TF1-366, p. 84 (CS); Transcript of 11 November 2005, TF1-366, p. 11 (CS); Transcript of 18 November 2005, TF1-045, p. 83 (CS); Transcript of 3 March 2006, TF1-113, p. 41; Transcript of 15 January 2008, Abu Bakar Mustapha, p. 3; Transcript of 9 June 2008, DAG-101, pp. 114-116. The Chamber notes that Superman was not trained as a Vanguard but he nonetheless claimed the title on account of his status as a former NPFL fighter in Liberia under Taylor: Transcript of 18 April 2008, Morris Kallon, pp. 70-71.

[1234] Transcript of 3 April, 2006, TF1-168, p. 75.

1.1.3.3. Rank

670. The ranks of officers in the RUF were, from highest to lowest, General, Major General, Brigadier (also sometimes referred to Brigadier General), Colonel, Lieutenant Colonel, Major, Staff Captain, Captain, Lieutenant and Second Lieutenant. The enlisted ranks were, from highest to lowest, Regimental Sergeant Major, Sergeant Major, Staff Sergeant, Sergeant, Corporal, Lance Corporal, and Private.[1235] However, these ranks did not have necessarily the same meaning as ranks in a conventional army.[1236]

671. As the officers rose in rank, they were be entitled to more bodyguards. Kallon testified that in general a Lieutenant had one bodyguard; a Captain had two bodyguards; a Staff Captain had three bodyguards; a Major had four bodyguards; a Lieutenant Colonel had seven bodyguards; a Colonel had 12 to 15 bodyguards; and a Brigadier was entitled to up to 30 bodyguards.[1237] The number of bodyguards assigned to a Commander was therefore an obvious sign of the status and authority that the Commander enjoyed within the RUF hierarchy.

1.1.3.4. Relative Value of Assignment, Rank and Status

672. While ranks were used and respected by the RUF, they were not always strictly followed. An individual's assignment superseded rank and was the more important factor in seniority.[1238] Accordingly, a Vanguard with an important assignment could nonetheless possess a low rank and this factor would not necessarily detract from his seniority.[1239] Individuals with co-equal ranks would determine their superiority based on their respective status or assignments.[1240]

673. In sum, the Chamber finds that within the structure of the RUF organisation and its hierarchy, an individual's assignment was the most important distinction, while a respected

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[1235] Transcript of 27 July 2005, TF1-036, pp. 38-39 (CS).
[1236] Transcript of 13 July 2005, TF1-361, pp. 62-63 (CS).
[1237] Contrary to Kallon's testimony, a Lt and Captain were not to be assigned with any bodyguards, a Major with responsibility was assigned two bodyguards and Major without responsibility was assigned one bodyguard, Lt. General was assigned six bodyguards, *See* Exhibit 273, RUF Ideology Book, p. 31067; Transcript of 14 April 2008, Morris Kallon, pp. 124-125, 127-128.
[1238] Transcript of 31 July 2006, TF1-371, p. 29 (CS); Transcript of 3 August 2005, TF1-036, p. 75 (CS); Transcript of 29 July 2005, TF1-036, p. 62; Transcript of 18 April 2005, TF1-141, pp. 39-40; Transcript of 2 November 2007, DIS-188, pp. 67-68 (CS); Transcript of 21 January 2008, DIS-174, pp. 115-116 (CS).
[1239] The Chamber notes in this regard that Foday Sankoh, the Leader of the RUF, remained a Corporal throughout the conflict.
[1240] Transcript of 18 April 2008, Morris Kallon, pp. 60-61.

status or rank added more weight or authority to their assignment.

1.1.4. The RUF Security Units

1.1.4.1. Overview of the RUF Special Units

674. The RUF comprised a number of special units which did not form part of the operational chain of command and did not participate directly in combat but which were essential to the pursuance of the RUF war effort.[1241]

675. The RUF organisation included five General Staff (G-staff) units structured similarly to those of the general staff of a conventional army. The G1 was in charge of recruitment and training of fighters.[1242] The G2 was responsible for espionage and counter-intelligence, and was later transformed into the Internal Defence Unit ("IDU") and the Intelligence Office ("IO").[1243] The G3 was in charge of general administration. The G4 handled military logistics, such as ammunition, while the S4 was in charge of food supplies.[1244] The G5 was concerned with civilian welfare and relations between civilians and the military.[1245] By 1999, the G1 had ceased to exist and the G5 was in charge of recruitment and training. [1246]

676. Johan Hederstedt, the military expert, testified that, as with most guerrilla movements, the RUF G-staff was rudimentary and reported directly to the Commander-in-Chief.[1247] It provided support to the Commanders in the execution of their duties but in a less systematic

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[1241] Exhibit 389, Military Report Johan Hederstedt, pp. 26776-26777; Transcript of 3 June 2008, DAG-048, p. 124.
[1242] Transcript of 3 May 2007, Issa Sesay, p. 75; Transcript of 31 May 2007, Issa Sesay, pp. 53-54; Transcript of 12 October 2004, General John Tarnue, pp. 93-94; Transcript of 19 April 2005, TF1-141, pp. 17, 19; Transcript of 31 March 2006, TF1-168, pp. 46-47 (CS); Transcript of 28 July 2006, TF1-371, p. 72 (CS); Transcript of 6 November 2007, DIS-149, p. 26 (CS). *See also* Exhibit 321, Memorandum from Chief of Defence Staff to the G1 Commander, dated 6 September 1998.
[1243] Transcript of 2 June 2008, DAG-110, p. 67.
[1244] Transcript of 3 May 2007, Issa Sesay, p. 75; Transcript of 29 July 2005, TF1-035, p. 36 (CS); Transcript of 21 January 2005, TF1-071, p. 13; Transcript of 14 April 2005, TF1-141, p. 61; Transcript of 18 July 2005, TF1-361, p. 88 (CS); Transcript of 31 March 2006, TF1-168, p. 46 (CS).
[1245] Transcript of 3 May 2007, Issa Sesay, p. 75; Transcript of 12 January 2005, TF1-304, p. 43; Transcript of 21 January 2005, TF1-071, p. 13; Transcript of 3 February 2005, TF1-012, p. 18; Transcript of 12 April 2005, TF1-141, p. 14; Transcript of 29 April 2005, TF1-114, p. 25; Transcript of 12 July 2005, TF1-361, p 53 (CS); Transcript of 19 July 2005, TF1-360, p. 106; Transcript of 1 August 2005, TF1-036, p. 11 (CS); Transcript of 2 March 2006, TF1-113, p. 42; Transcript of 13 March 2006, TF1-108, p. 18; Transcript of 27 March 2006, TF1-174, p. 60 (CS); Transcript of 10 July 2006, TF1-041, p. 16 (CS).
[1246] Transcript of 22 May 2007, Issa Sesay, p. 29; Transcript of 3 June 2008, DAG-048, p. 106.
[1247] Exhibit 389, Military Report Johan Hederstedt, p. 26777

way than in a conventional army.[1248] As staff support units, Special Security Units with their Overall Unit Commanders were generally located at RUF Headquarters.[1249]

677. Other military units within the RUF included the Medical Unit,[1250] the Armoury Unit[1251] and the Black Guards Unit. The Black Guards began as Sankoh's personal security guards, but their role evolved to general surveillance of the most senior RUF Commanders. The Black Guards worked for Bockarie when Sankoh was absent from Sierra Leone and reported only to them.[1252] The Black Guards were the only unit which possessed a VHF radio set and a radio operator.[1253]

678. Non-military units included the Mining Unit, which oversaw the mining operations in various locations and accounted for the proceeds thereof,[1254] the Agricultural Unit[1255] and the Organisation for the Survival of Mankind (OSM).[1256] The OSM was established by Sankoh in 1994 to assist with the distribution of food and aid from international NGOs in RUF-controlled areas.[1257]

679. The IDU, IO, G5, Military Police and the Black Guards collectively constituted the RUF's security apparatus. In essence, they were responsible for controlling the conduct of

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[1248] Exhibit 389, Military Expert Report of General Hederstedt with removed pages 28-42, pp. 11, 25-26; *see also* Transcript of 31 March 2006, TF1-168, p. 46 (CS);

[1249] Accordingly, in 1996 the Overall Unit Commanders were at Giema (Transcript of 25 January 2008, DIS-157, p. 45) while by 1998 they were located in Buedu (Transcript of 21 January 2005, TF1-071, p. 14).

[1250] *See generally* Transcript of 10 May 2007, Issa Sesay, pp. 74, 76, 81; Transcript of 15 May 2007, Issa Sesay, p. 33; Transcript of 18 October 2007, DIS-178, pp. 59-68; Transcript of 19 October 2007, DIS-178, p. 2; Transcript of 27 July 2005, TF1-036, p. 33 (CS); Transcript of 31 May 2005, Issa Sesay, p. 34; Transcript of 18 April 2008, Morris Kallon, p. 53; Transcript of 20 April 2005, TF1-362, p. 27 (CS); Transcript of 19 July 2005, TF1-360, p. 105 (CS).

[1251] Transcript of 21 April 2008, DMK-161, p. 110 (CS); Transcript of 22 April 2008, DMK-161, p. 5.

[1252] Transcript of 8 November 2005, TF1-366, p. 47 (CS); Transcript of 15 November 2005, TF1-366, pp. 69-71 (CS); Transcript of 26 June 2006, TF1-367, pp. 42-43 (CS); Transcript of 17 July 2006, TF1-041, pp. 47-48 (CS); Transcript of 17 May 2007, Issa Sesay, p. 13; Transcript of 22 October 2007, DIS-069, p. 111; Transcript of 12 November 2007, DIS-281, pp. 27-28 (CS). *See also* Exhibits 274 to 277, Situation Reports from the Blackguard Commander to the Leader, dated respectively 18 October 1999, 25 September 1999, 14 January 1999 and date unknown.

[1253] Transcript of 12 November 2007, DIS-281, p. 26 (CS); Transcript of 31 May 2007, Issa Sesay, p. 16.

[1254] Transcript of 29 February 2008, DIS-089, pp. 55-56; Exhibit 35, Salute Report of 26 September 1999, p. 13.

[1255] Transcript of 21 November 2005, TF1-045, p. 64; Transcript of 6 March 2006, TF1-113, p. 32; Transcript of 13 March 2006, TF1-108, pp. 32-34; Transcript of 14 March 2006, TF1-330, p. 25 (CS); Transcript of 28 July 2006, TF1-371, p. 123.

[1256] Transcript of 31 May 2007, Issa Sesay, pp. 14-16; Transcript of 3 May 2007, Issa Sesay, pp. 75-76; Transcript of 19 July 2005, TF1-360, p. 106 (CS).

fighters and the movements and activities of civilians. While each of these units had its own distinct sphere of responsibility, in practice there was a significant degree of overlap in their functions and certain responsibilities shifted from one unit to another at different points in time, at different locations and in different situations. The Chamber has set out below in detail its findings on the operation of the security units, as the effectiveness of these units is a critical consideration in ascertaining the extent to which RUF Commanders exercised control over their subordinates, remained informed of their activities and had the capacity to discipline them.

1.1.4.2. Command Over the Security Units

680. The staff units, and in particular the IDU, IO, G5 and MP, were not an integral part of the operational military command structure and did not interfere with it.[1258] Each special unit was under the control of an Overall Unit Commander, to whom the members of the unit reported. The Overall Unit Commanders reported to the local Area Commander.[1259] Area Commanders outranked Overall Unit Commanders in any particular location.[1260] Overall Unit Commanders therefore did not have authority over the Area Commanders or Battalion Commanders.[1261]

681. In addition, the Overall Commanders of the G5, MP, IDU, and IO units reported directly to the RUF High Command.[1262] The Leader, BFC, BGC and BFI could exercise command and control over the special units.[1263]

1.1.4.3. The Internal Defence Unit (IDU)

[1257] The OSM's did not operate continuously. Moreover, it operations were primarily limited to RUF-controlled areas in Kailahun District, although it was later present in Magburaka and Makeni: Transcript of 22 May 2007, Issa Sesay, pp. 75-76.

[1258] Transcript of 26 June 2006, TF1-367, p. 59 (CS).

[1259] Transcript of 22 October 2007, DIS-069, pp. 68-76; Transcript of 1 November 2007, DIS-188, p. 62 (CS).

[1260] Transcript of 3 August 2005, TF1-036, p. 47 (CS); Transcript of 26 October 2007, DIS-188, p. 13 (CS); Transcript of 5 November 2007, DIS-149, p. 83.

[1261] Transcript of 31 May 2007, Issa Sesay, p. 12; Transcript of 26 June 2006, TF1-367, p. 60 (CS). *See also* Transcript of 6 June 2008, DAG-080, pp. 51-52 and Transcript of 31 May 2007, Issa Sesay, p. 32-33, where the witnesses explain the power of the operational Commanders (Area Commanders and Brigade Commanders) relative to the Overall Unit Commanders by reference to the fact that operational Commanders exercise control over large numbers of fighters.

[1262] Transcript of 10 January 2008, DIS-163, p. 16.Transcript of 6 June 2008, DAG-080, pp. 50-51; Transcript of 3 June 2008, DAG-048, p. 32.

[1263] Transcript of 31 May 2007, Issa Sesay, p. 21; Transcript of 3 August 2005, TF1-036, p. 47 (CS); Transcript of 26 June 2006, TF1-367, p. 60 (CS).

682. The IDU investigated misconduct by fighters.[1264] IDU agents at the front lines were attached to most Battalions and Companies and each Brigade had an IDU Commander.[1265] While IDU agents monitored the behaviour of fighters, the IDU had no power or authority over military activities.[1266]

683. At certain stages of the conflict, the IDU was also responsible for issuing travel passes to civilians who wished to move between RUF controlled areas for trade or other purposes.[1267] In addition, in locations without G5 presence, the IDU removed civilians from the front lines to the free zones or safety zones, which were designated areas where civilians and fighters resided, away from areas of direct hostilities.[1268]

684. After receiving a report of misconduct, the local IDU Commander would advise the local MP to arrest and detain the fighter concerned.[1269] The IDU generally only commenced an investigation at the order of the BFC, BGC, or a Brigade or Area Commander.[1270] However, investigations were also instigated upon the filing of complaints by civilians.[1271]

685. Minor offences were usually investigated by local IDU Commanders upon an order from the local Area Commander.[1272] After the investigation, the Area Commander would recommend punishments for fighters who had committed crimes. Area Commanders possessed the authority to implement minor punishments such as flogging. After implementing a punishment, they would send a report to the Overall IDU Commander, Gbao.[1273] Most

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[1264] Transcript of 23 October 2007, DIS-069, pp. 58-62; Transcript of 3 June 2008, DAG-048, pp. 36-38; Transcript of 22 November 2007, DIS-124, pp. 72-73; Transcript of 25 January 2008, DIS-157, p. 34; Transcript of 21 January 2008, DIS-174 pp. 68-69.

[1265] Transcript of 25 January 2008, DIS-157, p. 35; Transcript of 6 June 2008, DAG-080, p. 46. The Chamber notes that a distinct IDU unit, known as the IDU WACS Unit, reserved exclusively for female IDU agents: *See* Transcript of 9 June 2008, DAG-101, pp. 84, 94-95, 98-100.

[1266] Transcript of 31 May 2007, Issa Sesay, pp. 33-34.

[1267] Transcript of 31 May 2007, Issa Sesay, p. 50.

[1268] Transcript of 23 October 2007, DIS-069, pp. 53-55; Transcript of 21 January 2008, DIS-174, pp. 66-68.

[1269] Transcript of 23 October 2007, DIS-069, pp. 58-62; Transcript of 3 June 2008, DAG-048, p. 38; Transcript of 31 May 2007, Issa Sesay, p. 51.

[1270] Transcript of 31 May 2007, Issa Sesay, p. 39.

[1271] Transcript of 23 October 2007, DIS-069, pp. 58-62; Transcript of 3 June 2008, DAG-048, pp. 36-38; Transcript of 22 November 2007, DIS-124, pp. 72-73; Transcript of 25 January 2008, DIS-157, p. 34; Transcript of 21 January 2008, DIS-174 pp. 68-69.

[1272] Transcript of 9 June 2008, DAG-101, pp. 98-100; Transcript of 10 May 2007, Issa Sesay, p. 78; Transcript of 31 May 2007, Issa Sesay, p. 43.; Transcript of 17 July 2006, TF1-041, p. 61 (CS).

[1273] Transcript of 9 June 2008, DAG-101, pp. 102-105.

disputes and investigations were resolved at the local level in this fashion.[1274]

686. In respect of more serious offences, however, the local IDU Commander was required to submit a report to the Overall IDU Commander, who would then assume responsibility for the investigation and often would refer the matter to the Joint Security Board of Investigations ("JSBI").[1275] Punishment for major offences required the authorisation of the High Command. Gbao as Overall IDU Commander would report the result of an investigation and recommend a punishment to High Command. Bockarie and Sesay would issue a decision to Gbao and Gbao would order the MP Commander to effect the punishment.[1276]

687. In principle, local IDU Commanders reported to the District, Battalion, or Overall IDU Commander.[1277] The Overall IDU Commander in turn reported to the High Command.[1278] IDU Commanders received instructions from the High Command and relayed them to their men.[1279] In practice, IDU Commanders would also report to the local Area Commander or Brigade Commander.[1230]

1.1.4.4. Intelligence Office (IC)

688. The Intelligence Office (IO), along with the Black Guards, was responsible for reporting intelligence from the front lines regarding RUF fighters who had broken RUF rules.[1281] IO agents also sent situation reports about the progress of military activity, including the capture of territory, civilians, arms and ammunition and the numbers of casualties during battle.[1282]

689. Agents reported to the Overall IO Commander, who would forward their reports to the

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[1274] Transcript of 25 January 2008, DIS-157, p. 35.
[1275] Transcript of 31 May 2007, Issa Sesay, p. 42. *See*, for example, Exhibit 379 which is a communication from the Intelligence Security Branch, dated 20 February 1999, addressed directly to the OSC.
[1276] Transcript of 31 May 2007, Issa Sesay, p. 43.Transcript of 9 June 2008, DAG-101, pp. 98-105; Transcript of 3 June 2008, DAG-048, p. 36; Transcript of 17 November 2005, TF1-366, p. 34-35 (CS).
[1277] Transcript of 6 June 2008, DAG-080, pp. 44-45.
[1278] Transcript of 3 June 2008, DAG-048, p. 25.
[1279] Transcript of 3 June 2008, DAG-048, p. 25.
[1280] Transcript of 31 May 2007, Issa Sesay, p. 39; Transcript of 25 January 2008, DIS-157, p. 46. Exhibit 389, Military Expert Report of General Hederstedt with removed pages 28-42, p. 27. The report indicates that sometimes the IDU Commanders reported to the overall Commanders and sometimes to the area Commanders.
[1281] Transcript of 31 May 2007, Issa Sesay, p. 15; Transcript of 14 January 2008, DIS-163, p. 7; Transcript of 25 January 2008, DIS-157, p. 45; Transcript of 17 July 2006, TF1-041, p. 48 (CS); Transcript of 6 June 2008, DAG-080, p. 39. In this respect the IO's functions appear to overlap with those of the IDU.
[1282] Transcript of 6 June 2008, DAG-080, p. 43.

High Command.[1283] The agents would also copy their reports to the Battalion Commander or Area Commander.[1284]

1.1.4.5. The Military Police Unit

690. The MP Unit handled complaints from both fighters and civilians[1285] and was responsible for enforcing discipline within the RUF.[1286] The MP unit carried out arrests and detentions,[1287] assisted in investigations and punished individuals who had been found guilty of transgressions by the IDU or Joint Security Board of Investigations.[1288] In 1998, the MP was also responsible for issuing civilians who wanted to travel with passes.[1289] Punishments administered by the MP included forced labour, flogging and detention.[1290] RUF members who committed serious crimes, such as rape, could be executed.[1291]

691. The Area or Brigade MP Commanders reported to the Overall MP Commander and in addition to the operational Area or Brigade Commander. [1292] The High Command issued orders to the Overall MP Commander.[1293]

1.1.4.6. G5 Unit

692. The G5 unit was responsible for all civilians in rebel territory.[1294] Following an RUF attack on a town, the G5 gathered appropriated foodstuffs and medicines and transported them to the free zones.[1295] Civilians who had been captured by the RUF would be taken to free

[1283] Transcript of 6 June 2008, DAG-080, p. 40.
[1284] Transcript 27 July 2005, TF1-036, pp. 41-42, 57-58; Transcript 6 June 2008, DAG-080, pp. 44-50.
[1285] Transcript of 26 October 2007, DIS-188, p. 2 (CS).
[1286] Transcript of 26 October 2007, DIS-188, p. 4 (CS); Transcript of 3 May 2007, Issa Sesay, pp. 75-76; Transcript of 25 November 2005, TF1-045, p. 33; Transcript of 25 October 2004, TF1-078, p. 104 (CS); Transcript of 11 April 2005, TF1-263, p. 42; Transcript of 28 April 2005, TF1-114, pp. 54-55; Transcript of 19 July 2005, TF1-360, p. 106 (CS); Transcript of 26 June 2006, TF1-367, p. 60 (CS).
[1287] Transcript of 3 June 2008, DAG-048, p. 36; Transcript of 3 June 2008, DAG-048, p. 36.
[1288] Transcript of 11 November 2005, TF1-366, pp. 6-7 (CS). *See infra* paras 701- 703.
[1289] Transcript of 10 May 2007, Issa Sesay, p. 85; Transcript of 25 January 2008, DIS-157, p. 84; Transcript of 3 June 2008, DAG-048, p. 91.
[1290] Transcript of 10 May 2007, Issa Sesay, pp. 79-80.
[1291] Transcript of 3 April 2006, TF1-168, p. 7 (CS); Transcript of 14 April 2008, Morris Kallon, pp. 119-120.
[1292] Transcript of 26 October 2007, DIS-188, pp. 16-18 (CS).
[1293] Transcript of 3 June 2008, DAG-048, pp. 24-25.
[1294] Transcript of 12 January, TF1-304, p. 43.
[1295] Transcript of 21 January 2008, DIS-174, p. 66.

zones and handed over to the G5, who would register and screen them.[1296] The G5 would also monitor the welfare of civilians and act as messengers, passing along orders issued by their superiors to the civilians.[1297]

693. The G5 had the authority to order the movement of civilians[1298] and was in charge of issuing travel passes to permit civilians to enter and depart RUF-controlled zones for trade, to aquire food or for other purposes.[1299] The G5 also trained civilians in RUF ideology.[1300]

694. Civilians were under the control of the G5, Chiefdom Commanders, and Section Commanders. If civilians were needed, the G5 was contacted; the G5 then contacted the Chiefdom and Section Commanders who would organise civilians for the purpose of providing labour.[1301]

695. While the G5 assisted in the resolution of disputes involving civilians and fighters, its role was generally limited to referring such disputes to the IDU.[1302] The G5 did, however, intervene directly in disputes between civilians.[1303]

696. G5s attached to a battalion or company reported to and took orders from the Battalion or Company Commander, not from the Overall G5 Commander.[1304] The Overall G5 Commander reported directly to Bockarie.[1305]

1.1.4.7. Overall Security Commander

697. The Overall Security Commander (OSC) supervised and advised the IDU, IO, MP and

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[1296] Transcript of 10 July 2006, TF1-041, pp. 44-45 (CS); Transcript of 12 July 2005, TF1-361 p. 53 (CS); Transcript of 23 November 2007, DIS-124, p. 19.
[1297] Transcript of 10 July 2006, TF1-041, p. 45 (CS).
[1298] Transcript of 13 March 2006, TF1-108, p. 19.
[1299] Transcript of 8 October 2007, DIS-077, pp. 55-57; Transcript of 26 October 2007, DIS-188, p. 22 (CS); Transcript of 3 June 2008, DAG-048, p. 91; Transcript of 23 November 2007, DIS-124, pp. 22-23; Transcript of 22 January 2008, DIS-174, p. 38 (CS).
[1300] Transcript of 23 November 2007, DIS-124, p. 20.
[1301] Transcript of 3 June 2008, DAG-048, p. 92; Transcript of 23 November 2007, DIS-124, pp. 8, 14.
[1302] Transcript of 17 July 2006, TF1-041, pp. 59-61 (CS).
[1303] Transcript of 17 July 2006, TF1-041, pp. 59-60 (CS).
[1304] Transcript of 17 July 2006, TF1-041, pp. 29-30 (CS). *See also* Transcript of 11 July 2006, TF1-041, p. 19 (CS), where the witness explains that the efficiency of the G5 therefore depended on the extent to which it was supported by the local Commander. *See* Exhibit 279, Report of the 2nd Brigade G5 Commander to the 2nd Brigade Commander, dated 10 March 1999.
[1305] Transcript of 9 June 2008, DAG-080, p. 4; Transcript of 12 November 2007, DIS-281, pp. 30-31 (CS); Transcript of 3 June 2008, DAG-048, p. 104; Transcript of 14 February 2008, DIS-085, p. 38 (CS).

G5.[1306] Gbao was OSC from 1996 to 2001 and he remained so throughout the entire Indictment period.[1307] The OSC did not have the formal power to issue orders to fighters,[1308] except for a later period in 2000.[1309]

698. The OSC was not superior to the Overall Unit Commanders and did not have the formal power to issue orders to them.[1310] Although members of the security units did not have an obligation to report to the OSC,[1311] the OSC was sent a copy of all of their reports.[1312]

699. While the *de jure* command structure subordinated the security units and their Overall Commanders to the operational Commanders at all times, the Chamber is of the view that in reality the OSC enjoyed substantial practical authority over the members of the security units. There is evidence that on occasion Gbao, as OSC, did in fact give orders to members of the security units and, in particular, to the G5.[1313]

700. It is therefore apparent that the command structure for the security units involved multiple lines of authority, with the relevant Area Commander, the High Command and the OSC entitled to exercise varying degrees of authority over the members of the units. Moreover, the Chamber is of the opinion that the fact that Gbao may have possessed only limited authority in respect to combat operations is immaterial to the extent of his authority as OSC in RUF controlled territory where combat operations did not take place and the security units enjoyed enhanced importance as the central components of a static administration. We find

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[1306] Transcript of 10 July 2006, TF1-041, p. 64 (CS); Transcript of 3 June 2008, DAG-048, p. 51. The Chamber notes that witnesses used various terms to refer to Gbao, including the Chief Security Officer, Chief of Securities and Joint Security Commander: *see* Transcript of 21 January 2005, TF1-071, p. 9-11; Transcript of 10 March 2006, TF1-108, pp. 115-116 (CS); Transcript of 6 June 2008, DAG-080, pp. 44-45. The Chamber is satisfied that these terms refer to the same role, which we have referred to for consistency as the OSC.

[1307] Transcript of 3 June 2008, DAG-048, pp. 50-51; Transcript of 5 June 2008, DAG-048, p. 7; Transcript of 16 June 2008, DAG-047, p. 80; Transcript of 19 July 2005, TF1-361 pp. 32-33, 61; Transcript of 29 March 2006, Leonard Ngondi, p. 7-10.

[1308] Transcript of 3 June 1998, DAG-048, p. 48. The Chamber notes that there is evidence that certain fighters did not respect the Unit Commanders, and Gbao personally, since they were not fighters: *see* Transcript of 6 June 2008, DAG-080, pp. 14-15; Transcript of 3 June 2008, DAG-048, p. 47; Transcript of 2 June 2008, DAG-110, p. 88.

[1309] Transcript of 26 January 2005, TF1-360, pp. 111-112.

[1310] Transcript of 9 June 2008, DAG-080, p. 61; Transcript of 9 June 2008, DAG-101, pp. 109-110.

[1311] Transcript of 9 June 2008, DAG-080, p. 28.

[1312] Transcript of 3 June 2008, DAG-048, p. 133.

[1313] *See, for example* evidence of Gbao passing orders from Bockarie to the G5 Commanders: DAG-048, Transcript 3 June 2008, p. 49. Although this order does not appear to have been effective in this instance, the Chamber finds it instructive that Bockarie requested Gbao as OSC to transmit it rather than the Overall G5 Commander. *See also* Transcript of 14 March 2006, TF1-330, pp. 41-42.

that in RUF controlled territory, the OSC was responsible for the enforcement of discipline and law and order.[1314]

1.1.4.8. Joint Security Board of Investigations

701. Sankoh created the JSBI to promote cooperation between the various security units in joint investigations.[1315] The JSBI was essentially an investigating panel convened on an *ad hoc* basis to investigate serious cases of misconduct, such as rape or murder.[1316] The membership of the JSBI was not fixed, but comprised agents from the MP, G5, IDU, IO and Black Guards. Gbao as OSC often, but not always, acted as the Chairman.[1317]

702. If a fighter admitted to wrongdoing, he would be punished and a JSBI would not be required.[1318] However, if a fighter disputed culpability, the Brigade IDU Commander would inform the Brigade Commander of the allegation.[1319] The High Command had the exclusive power to initiate a JSBI investigation.[1320] After an investigation, the JSBI would compile a report with recommendations and the OSC would transmit the report to High Command.[1321]

703. If the JSBI advised a Brigade Commander to take action against a fighter and the Brigade Commander ignored this advice, he would receive a warning letter from the JSBI Chairman. If the Brigade Commander continued to refuse to take action, the JSBI would inform the High Command.[1322]

1.1.5. Discipline within the RUF

704. The importance of discipline and obedience of orders issued by superior officers was

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[1314] Also according to DAG-080, the OSC had the had the authority to maintain law and order by ensuring that the other units performed *see* Transcript 9 June 2008, DAG-080, pp. 44-51, p. 28.
[1315] Transcript of 26 June 2006, TF1-367, p. 59 (CS). The Chamber notes that witnesses also referred to this body as the Joint Security Board and the Joint Security Investigation Panel: *see*, for example, Exhibit 180.
[1316] Transcript of 25 January 2008, DIS-157, p. 51; Transcript of 3 June 2008, DAG-048, p. 54.
[1317] Transcript of 14 April 2008, Morris Kallon, p. 34; Transcript of 26 June 2006, TF1-367, p. 63 (CS); Transcript of 6 June 2008, DAG-080, pp. 74, 81; Transcript of 25 January 2008, DIS-157, pp. 49-50. Transcript of 1 June 2007, Issa Sesay, p. 8. For evidence of JSBIs chaired by officers other than Gbao, *see* Exhibit 44, Letter from Security Chairman to Bockarie dated 6 May 1998, and Exhibit 107, Report from Joint Security Board of Investigations to Peter Vandi, both of which are official documents of the JSBI in Kono of which Gbao was not a member.
[1318] Transcript of 25 January 2008, DIS-157, p. 50.
[1319] Transcript of 1 June 2007, Issa Sesay, p. 7; Transcript of 17 July 2006, TF1-041, p. 63 (CS).
[1320] Transcript of 6 June 2008, DAG-080, p. 71; Transcript of 1 June 2007, Issa Sesay, pp. 7-8.
[1321] Transcript of 9 June 2008, DAG-101, p. 109.
[1322] Transcript of 1 June 2007, Issa Sesay, p. 9.

instilled in RUF fighters as part of their training and formed a pillar of the RUF military ideology.[1323]

705. The RUF ideology included the Eight Codes of Conduct which governed the fighters' interactions with civilians. The Codes provided in part:

> To speak politely to masses
> To pay fairly for all [that] you buy
> To return everything that you borrow
> To pay for everything that you demand or damage
> Do not damage crops
> Do not take liberty from women
> Do not ill-treat captives
> Do not hate or swear people.[1324]

706. We consider that the RUF's disciplinary system was critical to maintaining its operation as a cohesive military organisation, particularly as the force grew with the addition of captured civilians trained as fighters. There is evidence of radio messages sent from Sankoh periodically to reiterate the importance of discipline, respect for the chain of command and of obeying RUF rules.[1325] Fighters who failed to obey orders were liable to be executed.[1326]The Chamber therefore finds that Commanders utilised the disciplinary mechanisms available to them primarily as a means to intimidate and control their subordinates and compel obedience to superior orders.

707. The Chamber is cognisant of the fact that throughout the Indictment period fighters were indeed punished for transgressions such as rape, looting and burning.[1327] However, it is

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[1323] Exhibit 273, RUF Ideology Book, pp. 31041-31402. *See also* Transcript of 27 July 2005, TF1-036, p. 40 Kallon Final Trial Brief, para. 693.

[1324] Exhibit 367, Document with Information on Aims of the RUF, p. 4; The Chamber notes that witnesses also referred to similar sets of principles such as the Three Points of Attention or the Three Discipline Factors and the Twenty-Five Standing Orders of the RUF: Exhibit 273, RUF Ideology Book, pp. 31041; Transcript of 3 May 2007, Issa Hassan Sesay, p. 51; Transcript of 11 July 2006, TF1-041, pp. 14-15 (CS); Transcript of 11 April 2008, Morris Kallon, pp. 54, 56; Transcript of 9 June 2006, DAG-080, p. 57; Transcript of 1 August 2006, TF1-371, p. 57 (CS); Transcript of 1 August 2005, TF1-036, p. 32 (CS); Transcript of 3 April 2006, TF1-168, p. 62 (CS); Transcript of 26 June 2006, TF1-367, p. 33 (CS); Transcript of 15 January 2008, DIS-214, p. 54 (CS). Transcript of 14 April 2008, Morris Kallon, p. 4; Exhibit 339, Kallon Handbook, pp. 25405-25410; Transcript of 29 April 2008, DMK-132, p. 6; Transcript of 19 October 2007, DIS-188, p. 76 (CS); Transcript of 29 October 2007, DIS-188, p. 75 (CS).

[1325] Exhibit 212, RUF Radio Log Book, pp. 28055-28057.

[1326] Transcript of 26 July 2005, TF1-360, p. 50 (CS); Transcript of 22 March 2006, Edwin Kasoma, pp. 38-39.

[1327] *See*, for example, TF1-366, Transcript of 9 November 2005, p. 24; Transcript of 22 May 2007, Issa Sesay, p. 113; Transcript of 6 June 2006, DAG-080, p. 5; Exhibit 203, MP Situation Report, p. 000257121; Exhibit 204, Memo from MP HQ Makeni to IO HQ Makeni, p. 27822; Exhibit 205, Memo to RUF Field Commander from MP Commander, p. 28015.

noteworthy that these instances of systematic discipline of fighters for crimes committed against civilians occurred in locations where the RUF had a relatively stable control over that territory and we find that the objective of such actions was secure the loyalty of civilians for the success of their operations.

708. In the context of military operations, however, the Chamber observes that the RUF Commanders ordered the commission of crimes against civilians. For instance "Operation Pay Yourself", endorsed by Bockarie and conducted in towns where Sesay and Kallon were present as senior Commanders, is a prime example.[1328] Similarly, prior to the December 1998 attack on Koidu, the Commanders involved suggested that there was to be "no looting until the mission had been accomplished."[1329]

709. The Chamber therefore considers that the RUF operated on the basis that criminal conduct was inherently acceptable in certain situations. This is consistent with the central tenet of the RUF ideology that the movement was all-encompassing and civilians were required and expected to bear the costs of the revolution, for instance by providing food and labour. Consequently, those civilians who resisted the RUF were enemies.[1330]

710. Moreover, certain crimes against civilians were clearly regarded as permissible at all times. In particular, the entrenched practices of using civilians as forced labour, women as bush wives and children as participants in active hostilities were not only condoned but were supervised by senior Commanders and in particular the Commanders of the G5, presided over by Gbao as OSC.[1331]

711. The Chamber therefore finds that a defining feature of the RUF disciplinary system was its highly selective application: punishments were meted out at certain times for certain crimes. As one witness agreed in relation to the security units, "however effective the detection and reporting of crimes, if the top man [to whom reports are sent] chooses to ignore it, crimes

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[1328] *Infra* paras 782-786.
[1329] Exhibit 225, Forum Minutes, 2nd Brigade Headquarters, Kono Axis, dated 11 December 1998, 00015403.
[1330] *Infra* para. 654. *See also* Exhibit 367, Confidential Document with Information on the Aims of the RUF, tendered during the examination of DMK-162.
[1331] Transcript of 21 July 2006, TF1-371, pp. 65-67; Transcript of 28 April 2005, Denis Koker, p. 63; Transcript of 21 November 2005, TF1-045, p. 63; Transcript of 6 March 2006, TF1-113, pp. 21-31; Transcript of 14 March 2006, TF1-330, p. 24 (CS); Transcript of 16 March 2006, TF1-330, pp. 67-68, 75-80 (CS); Transcript of 21 July

remain unpunished."[1332] When inflicted, punishments reinforced the Commanders' control over their fighters by emphasising that crimes were permissible only on their orders or at their discretion.

712. We therefore find that the RUF disciplinary system functioned essentially to allow the leadership to maintain control over all the RUF fighters and impose and maintain order in RUF-held territory. It failed to systematically deter or regularly and effectively punish crimes against civilians or persons *hors de combat*. The disciplinary process was fundamentally a means of keeping control over their own fighters and was not a system to punish for the commission of crimes. However, some crimes were punished in areas under RUF control and where no hostilities were then taking place in order to appease the population who reacted to a particular situation.[1333]

1.1.6. Communications within the RUF

713. As is common in guerrilla warfare, the RUF conducted its operations over large areas with poor infrastructure. The communications system, which relied largely on radio sets, was therefore of the utmost importance.[1334]

714. The Signal Unit oversaw radio communications between Commanders of the various RUF contingents on the ground and the High Command.[1335] Each radio set in the RUF was manned by Operators who were trained to transmit and receive messages. The Station Commander was senior to the Operators and had control over the communications set. The duty of the Overall Signal Commander was to monitor all radio stations, discipline signallers,

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2006, TF1-371, pp. 60, 62-63 (CS). Also according to DAG-080, the OSC had the had the authority to maintain law and order by ensuring that the other units performed: *see* Transcript 9 June 2008, DAG-080, pp. 44-51, p. 28.

[1332] Transcript of 9 June 2008, DAG-080, p. 8. *See also* Transcript 6 June 2008, DAG-080, pp. 51-52, where the witness testified that if the MP arrested a soldider for harassing a civilian, "[i]f that matter is brought before the Area Commander he can immediately order the MP to release that soldier without investigating him. He can say okay just forget about that man, release him and he will be released."

[1333] For instance, according to DIS-157 a civilian woman who was eight months pregnant was raped by an RUF fighter in Daru in 1998. The victim reported the rape and DIS-157 and other MP Commanders ordered Jalloh to be shot after he admitted to the rape as punishment; Transcript of 24 January 2008, DIS-157, pp. 124-126.

[1334] Exhibit 389, Military Expert Report of General Hederstedt with removed pages 28-42, p. 11.

[1335] Transcript of 31 May 2007, Issa Sesay, pp. 14-16; Transcript of 11 July 2005, TF1-361, p. 47 (CS); Transcript of 2 November 2007, DIS-188, p. 15 (CS); *see generally* Transcript of 21 January 2005, TF1-071, p. 13; Transcript of 20 July 2005, TF1-360, p. 5 (CS).

and report to the Commanders.[1336]

715. During the Junta period, AFRC radio operators, being former SLA, used Morse code. The RUF radio operators did not understand Morse code, but used their own codes for secret messages. In addition, the RUF sometimes communicated on sub-frequencies that were unknown to the AFRC.

716. By late 1998 or early 1999, every Brigade and Battalion in each operational area had a radio set and a signaller. [1337] The Commander in charge of any particular location had control over any radio set located there.[1338] Fighters on patrol did not have radios and so were unable to broadcast during such operations. Rather, a salute report would be made on completion of a patrol.[1339]

717. The RUF had formal and well-developed procedures for radio communications.[1340] All RUF radio operators had the right to monitor the general frequency.[1341] Secret messages and those messages which related to operational matters, for instance orders for food-finding missions or ambushes, were coded; welfare messages were not.[1342] Senior Commanders used code names to identify themselves in messages. Sankoh was known as Black Moses[1343] and Smile.[1344] Bockarie was known as Concord,[1345] Log,[1346] or Planet.[1347] Sesay was known as Survival[1348] or Survivor,[1349] and later Solar System or SSS.[1350] Kallon was known as Friend,[1351]

[1336] Transcript of 11 July 2005, TF1-361, p. 82. Signaler was a generic term for either a station Commander or an operator: Transcript of 25 April 2008, DMK-163, p. 103.
[1337] Transcript of 28 July 2005, TF1-036, p. 62 (CS); Transcript of 3 June 2008, DAG-048, p. 38; Transcript of 14 April 2005, TF1-141, p. 62.
[1338] Transcript of 5 June 2008, DAG-048, p. 24.
[1339] Transcript of 15 January 2008, DIS-214, p. 95 (CS).
[1340] *See* Exhibit 366, RUF Radio Log Book, pp. 2-3 which describes the RUF communications system, including the terminology to be used by operators when transmitting voice messages. For example, WILCO meant 'Your order received and understood and will be complied with.'
[1341] Transcript of 17 January 2008, DIS-214, p. 111 (CS).
[1342] Transcript of 15 January 2008, DIS-214, pp. 90-92 (CS).
[1343] Transcript of 14 July 2005, TF1-361, p. 52 (CS).
[1344] Transcript of 28 July 2006, TF1-371, p. 29; Transcript of 14 January 2008, Abu Bakar Mustapha, p. 41; Transcript of 15 April 2008, Morris Kallon, 48.
[1345] Transcript of 22 May 2007, Issa Sesay, p. 68 (CS); Transcript of 14 April 2008, Morris Kallon, p. 59.
[1346] Transcript of 22 May 2007, Issa Sesay, p. 68 (CS); Transcript of 14 April 2008, Morris Kallon, p. 55.
[1347] Transcript of 28 July 2006, TF1-371, p. 29; Transcript of 22 May 2007, Issa Sesay, 60; 22 May 2007 Issa Sesay, p. 68 (CS).
[1348] Transcript of 13 July 2005, TF1-361, p. 21 (CS); Transcript of 22 May 2007, Issa Sesay, pp. 70-71 (CS).
[1349] Transcript of 23 May 2007, Issa Sesay, pp. 9-10; Transcript of 15 April 2008, Morris Kallon, p. 54.
[1350] Transcript of 13 July 2005, TF1-361, p. 21 (CS); Transcript of 18 May 2007, Issa Sesay, p. 29.

Sparrow or SP.[1352] Superman was known as Equaliser[1353] or Time Bomb.[1354]

718. All stations were given the codes so that messages could be decoded and read.[1355] Sent and received operational messages were documented, dated and registered in a log book.[1356] Bockarie's messages from Headquarters were always recorded in the log book.[1357]

719. Radio communication was also a primary method by which RUF officers sought orders from and transmitted reports to their Commanders.[1358] The communications system was thus integral to the successful operation of the chain of command within the RUF military hierarchy.

720. The Chamber concludes that the radio system permitted RUF Commanders to maintain regular and adequate communication between all operational levels throughout the entire Indictment period. The Chamber also concludes that the RUF possessed an effective communications system.

1.2. The RUF from 1991 to November 1996

1.2.1. Military Structure and Operations

721. When the RUF began organised armed operations in Sierra Leone in March 1991,[1359] the High Command was comprised of the Leader Foday Sankoh, the BFC Mohamed Tarawallie and the BGC Rashid Mansaray.[1360] The Chamber observes that at a very early stage, the command structure of the RUF was already composed of these three key positions.

[1351] *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Kallon Defence Filing in Compliance with Scheduling Order Concerning the Preparation and Commencement of the Defence Case (TC), 5 March 2007, Annex H, Fact 14.
[1352] *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Kallon Defence Filing in Compliance with Scheduling Order Concerning the Preparation and Commencement of the Defence Case (TC), 5 March 2007, Annex H, Fact 14; Transcript of 25 May 2007, Issa Sesay, p. 41.
[1353] Transcript of 22 May 2007, Issa Sesay, p. 60.
[1354] Transcript of 18 May 2005, TF1-334, p. 32 (92*bis*); Transcript of 22 May 2007, Issa Sesay, p. 60.
[1355] Transcript of 17 January 2008, DIS-214, p. 112 (CS).
[1356] Transcript of 15 January 2008, DIS-214, p. 91 (CS). *See also* RUF Radio Log Books admitted as Exhibits 32, 33, 34, and 212.
[1357] Transcript of 15 January 2008, DIS-214, p. 93 (CS).
[1358] *See* Exhibit 32, Radio Log Book, pp. 8640, 8941, 8642, 8682. *See* other Radio Log Book: Exhibits 33, 34, and 212.
[1359] Consequential Order on Judicial Notice, Annex I, Fact A.
[1360] Transcript of 1 August 2006, TF1-371, pp. 48-50 (CS); Transcript of 24 January 2005, TF1-071, pp. 22-23; Transcript of 22 November 2005, TF1-045, p. 47 (CS); Transcript of 24 November 2005, TF1-045, p. 89 (CS);

722. The fighting force of the RUF at that time consisted of two Battalions, supported by members of the NPFL under Charles Taylor.[1361] The 1st Battalion, referred to as "Libya", attacked Sierra Leone on a southern front in Pujehun District, while the 2nd Battalion, referred to as "Burkina" attacked the eastern front of Kailahun District.[1362] Prior to 1994, there was virtually no communication between the two Battalions, as radio sets were unavailable.[1363]

723. From 1991 to 1994 Foday Sankoh was based in Kailahun District.[1364] Battalion Commanders at various times throughout this period included Mike Lamin, Patrick Lamin, Momoh Rogers and Gibril Massaquoi.[1365]

724. Between 1991 and 1993, many Liberians fought alongside the RUF in Sierra Leone.[1366] The Liberian fighters committed large scale atrocities against the civilian population[1367] and the RUF adopted many of their fighting tactics and measures to terrorise the civilian population.[1368] Many RUF fighters, including all three Accused, moved regularly between Liberia and Sierra Leone.[1369] However, towards the end of 1992 Sankoh ordered the Liberian fighters to leave the country.[1370] Several high-ranking Liberian fighters remained and subordinated themselves to RUF command as part of the RUF forces. These high ranking

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Transcript of 3 April 2006, TF1-168, p. 17 (CS); Transcript of 10 November 2005, TF1-366, p. 106 (CS). *See generally* Transcript of 31 March 2006, TF1-168, p. 91 (CS); Transcript of 3 May 2007, Issa Sesay, pp. 73-74.

[1361] Exhibit 181, NPWJ Conflict Mapping Report, p. 44; Exhibit 174, Human Rights Watch, *Murder*, p. 7; Transcript of 3 May 2007, Issa Sesay, p. 56; Transcript of 20 July 2006, TF1-371, p. 22 (CS); Transcript of 27 July 2005, TF1-036, p. 25 (CS).

[1362] Transcript of 27 July 2005, TF1-036, pp. 23-25 (CS); Transcript of 3 May 2007, Issa Sesay, p. 60; Transcript of 19 July 2005, TF1-360, pp. 92, 106 (CS); Transcript of 11 April 2005, TF1-141, pp. 103-104; Transcript of 19 October 2007, DIS-069, p. 43 (CS); Transcript of 2 June 2008, DAG-110, pp. 66-67.

[1363] Transcript of 27 July 2005, TF1-036, p. 25 (CS); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Defence Request for Agreement of Facts, 8 March 2007, Agreed Fact 4 and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Response to Sesay Request for Agreement of Facts, 23 March 2007, para. 3 [Prosecutor and Sesay Agreed Facts].

[1364] Transcript of 11 October 2007, DIS-078, p. 106; Transcript of 19 July 2005, TF1-360, pp. 99-100 (CS); *see generally* Transcript of 11 July 2005, TF1-361, pp. 42-43 (CS), stating that Sankoh came to Bunumbu, located in Kailahun District, to train the witness.

[1365] Transcript of 27 July 2005, TF1-036, pp. 24-25 (CS); Transcript of 22 November 2005, TF1-073, p. 50 (CS).

[1366] Transcript of 25 July 2005, TF1-360, p. 92 (CS); Transcript of 24 July 2006, TF1-371, p. 69 (CS);

[1367] Transcript of 25 July 2005, TF1-360, pp. 93-94 (CS); Transcript of 26 June 2007, DIS-301, p. 58; Transcript of 11 October 2007, DIS-078, p. 106; Transcript of 19 October 2007, DIS-069, p. 32 (CS); Transcript of 2 June 2008, DAG-110, p. 62; Transcript of 6 June 2008, DAG-080, p. 10.

[1368] Transcript of 11 October 2007, DIS-078, p. 109.

[1369] Transcript of 5 October 2004, General John Tarnue, pp. 18-19.

[1370] Transcript of 11 October 2007, DIS-078, p. 109.

fighters included Superman, Rambo, Isaac Mongor, CO Rocky, and Kailondo.[1371]

725. The RUF High Command remained unchanged until Mansaray's death in 1994, when Sam "Mosquito" Bockarie became BGC.[1372]

726. Throughout 1994 and 1995 the RUF managed to push deeper into Sierra Leone and established various camps or bases within the territory, although the RUF did not often have territorial control over the entire surrounding area. These camps had geographical or code names, including Bo Jungle in Bo District,[1373] Bradford or Western Jungle in Moyamba District,[1374] Burkina in Kailahun District,[1375] Kangari Hills or Northern Jungle in Tonkolili District,[1376] Libya in Pujehun District,[1377] and Peyama and Camp Zogoda in Kenema District.[1378] Area Commanders were appointed for those camps or bases.[1379]

727. From early 1995 Camp Zogoda in Kenema District functioned as the RUF's primary operational base.[1380] All radio communications from the Area Commanders were eventually received by Sankoh at Camp Zogoda and reports were sent to the BFC and BGC.[1381]

728. By 1996 the RUF had expanded its territory to also include Kailahun Town, Buedu,

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[1371] Transcript of 14 April 2008, Morris Kallon, p. 27; Transcript of 18 July 2005, TF1-361, p. 97 (CS); Transcript of 20 July 2005, TF1-360, p. 6 (CS); Transcript of 9 November 2005, TF1-366, p. 41 (CS).

[1372] Transcript of 1 August 2006, TF1-371, p. 50 (CS); Transcript of 24 November 2005, TF1-045, pp. 89-90 (CS); Transcript of 6 June 2008, DAG-080, p. 11; Transcript of 24 January 2005, TF1-071, pp. 22-23, 56; Transcript of 10 November 2005, TF1-366, p. 106 (CS); Transcript of 25 April 2008, DMK-163, p. 94; Transcript of 28 July 2005, TF1-036, p. 23 (CS);; Transcript of 19 July 2005, TF1-360, p. 100 (CS); Transcript of 26 October 2007, DIS-188, p. 17 (CS).*See generally* Transcript of 31 March 2006, TF1-168, p. 91 (CS); Transcript of 3 May 2007, Issa Sesay, pp. 73-74, 109.

[1373] Transcript of 3 May 2007, Issa Sesay, p. 105; Transcript of 19 July 2005, TF1-360, pp. 106-108 (CS); Transcript of 6 November 2007, DIS-281, pp. 84-85 (CS); Transcript of 5 May 2008, DDMK-116, p. 42; Transcript of 3 August 2005, TF1-036, p. 24 (CS), stating that Bo Jungle was also known as Koribundu Jungle.

[1374] Transcript of 3 May 2007, Issa Sesay, pp. 108-109; Transcript of 19 July 2005, TF1-360, p. 107 (CS); Transcript of 21 January 2008, DIS-174, p. 69; Transcript of 24 January 2008, DIS-157, p. 36.

[1375] Transcript of 19 July 2005, TF1-360, p. 106 (CS); Transcript of 25 October 2007, DIS-188, pp. 67-68 (CS).

[1376] Transcript of 19 July 2005, TF1-360, p. 107 (CS); Transcript of 21 January 2008, DIS-174, p. 69; Transcript of 24 January 2008, DIS-157, p. 36. *See also* Transcript of 24 January 2005, TF1-071, p. 34, stating that Northern Jungle and Kangari Hills are used interchangeably.

[1377] Transcript of 19 July 2005, TF1-360, p. 106 (CS).

[1378] Transcript of 19 July 2005, TF1-360, pp. 106-107 (CS); Transcript of 28 July 2005, TF1-036, p. 23 (CS); Transcript of 21 January 2008, DIS-174, p. 69; Transcript of 24 January 2008, DIS-157, p. 36; Transcript of 25 April 2005, TF1-362, p. 22 (CS).

[1379] As of 1994, RUF Area Commanders included Rocky CO for Pujehun District, Augustine Kargbo at Bo Jungle, Superman at Western Jungle, Isaac Mongor at Northern Jungle, and Papa at Peyama: Transcript of 28 July 2005, TF1-036, p. 24 (CS); Transcript of 22 November 2005, TF1-045, pp. 38-39.

[1380] Transcript of 4 May 2007, Issa Sesay, p. 18; Transcript of 28 July 2005, TF1-036, p. 24 (CS).

[1381] Transcript of 28 July 2005, TF1-036, p. 24 (CS); Transcript of 22 October 2007, DIS-069, pp. 71-73.

Giema, Pendembu, Daru and Segbwema in Kailahun District and the diamond mining area of Tongo Field in Kenema District.[1382]

729. The RUF structure also included a War Council, which was created by Sankoh to serve as a decision-making body for the planning of the struggle against the Government.[1383] The goals of the War Council were to inform civilians about the RUF's armed struggle, care for the welfare of civilians and improve food and medical facilities in RUF territory.[1384]

1.2.2. The Role of the Accused

1.2.2.1. Sesay

730. In 1992, when the NPRC staged the coup in Freetown, Sesay was in Pendembu.[1385] By 1993, Sesay had been assigned Battle Front Inspector ("BFI") and in the discharge of his duties he visited the front lines and inquired into the problems the fighters were facing.[1386] In December 1993, Sesay was appointed Target Commander in Kailahun District.[1387] In this role, he had the responsibility of defending the roads leading to various villages from enemy attack, as well as supervising the Sub-Target Commanders.[1388]

731. In late 1994, the RUF in Giema was threatened by enemy forces and Sankoh sent Sesay to Giema to bring the situation under control.[1389] From 1994 through 1995, Sesay was the

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[1382] Transcript of 24 January 2008, DIS-157, pp. 43-44; Transcript of 4 May 2007, Issa Sesay, p. 49; Transcript of 27 July 2005, TF1-036, p. 34 (CS); Transcript of 28 July 2005, TF1-036, p. 25 (CS); Transcript of 31 July 2006, TF1-371, p. 98 (CS); Transcript of 24 January 2005, TF1-071, p. 33; Transcript of 13 July 2005, TF1-361, p. 55 (CS); Transcript of 13 July 2005, TF1-361, p. 36 (CS); Transcript of 25 April 2005, TF1-362, pp. 37-38 (CS); Transcript of 19 July 2005, TF1-360, p. 103 (CS). The Chamber notes that Bo Jungle was abandoned during the rainy season of 1996 due to Kamajor attacks: Transcript of 19 July 2005, TF1-360, pp. 106-108 (CS); Transcript of 21 January 2008, DIS-174, p. 73.

[1383] Transcript of 3 May 2007, Issa Sesay, p. 89; Transcript of 12 July 2005, TF1-361, p. 77 (CS); Transcript of 19 July 2005, TF1-360, p. 104 (CS); Transcript of 3 August 2005, TF1-036, p. 16 (CS); Transcript of 3 April 2006, TF1-168, p. 64 (CS); Transcript of 11 November 2005, TF1-045, p. 69 (CS).

[1384] Transcript of 16 October 2007, DIS-078, pp. 18-19. The War Council met in Buedu and its membership comprised high-ranking RUF Commanders and members of the civilian population: Transcript of 14 April 2008, Morris Kallon, p. 4; Transcript of 26 July 2005, TF1-360, p. 38 (CS); Transcript of 3 May 2007, Issa Sesay, pp. 90-91; Transcript of 3 April 2006, TF1-168, pp. 64-65 (CS).

[1385] Transcript of 3 May 2005, Issa Sesay, p. 72. *See supra* para. 13.

[1386] Transcript of 21 January 2008, DIS-174, p. 57; Transcript of 23 November 2007, DIS-124, p. 44.

[1387] Transcript of 3 May 2007, Issa Sesay, pp. 95-96; Transcript of 19 October 2007, DIS-069, pp. 34-35 (CS).

[1388] Transcript of 3 May 2007, Issa Sesay, pp. 95-96.

[1389] Transcript of 21 January 2008, DIS-174, pp. 70-71; Transcript of 14 March 2006, TF1-330, p. 55 (CS), stating that in 1994 Sesay was in Giema.

Area Commander for Giema and Kailahun Town.[1390] As Area Commander, Sesay had a radio to communicate with Camp Zogoda. The MP and IDU in his area reported to him.[1391] Sesay reported to the BGC, Bockarie.[1392]

732. In November 1995, Sesay travelled to the Ivory Coast for medical treatment and returned to Giema in April 1996. A few weeks later he was called to Camp Zagoda and subjected to an investigation for misuse of funds, at which time Sankoh demoted him from Major to Captain. RUF Commander Peter Vandi assumed Sesay's position of Area Commander for Giema and Kailahun Town from November 1995. In October 1996, Sesay returned to Giema without assignment.[1393]

1.2.2.2. Kallon

733. Between 1991 and 1994 Kallon was stationed in Kailahun District.[1394] From 1994 through 1995 Kallon was in Bo Jungle, [1395] and in early 1996, he was at Camp Zogoda.[1396]

1.2.2.3. Gbao

734. Gbao worked as a Commander in Kailahun District between 1991 and 1994.[1397] In 1994, he was a Border Control Commander, monitoring the border for enemy infiltration and with command over some RUF fighters.[1398] Gbao then became Secretary to Sankoh. In 1995, Gbao was a Sergeant and was sent to the Baima base in Kailahun District as an ideology instructor.[1399] In early 1996, at Camp Zogoda, Sankoh appointed Gbao as the Overall IDU Commander and the OSC for the RUF, and he retained these appointments until after

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[1390] Transcript of 4 May 2007, Issa Sesay, p. 19; Transcript of 28 July 2005, TF1-036, pp. 23-28 (CS); Transcript of 22 November 2005, TF1-045, p. 39; Transcript of 25 October 2007, DIS-188, pp. 67-68 (CS); Transcript of 10 November 2005, TF1-366, p. 108 (CS); Transcript of 19 July 2005, TF1-360, pp. 103-104 (CS).
[1391] Transcript of 4 May 2007, Issa Sesay, p. 53; Transcript of 25 October 2007, DIS-188, pp. 67-68 (CS) *See also* Transcript of 21 January 2008, DIS-174, p. 72.
[1392] Transcript of 28 July 2005, TF1-036, p. 23 (CS); Transcript of 24 November 2005, TF1-045, p. 90 (CS); Transcript of 3 May 2007, Issa Sesay, p 109; Transcript of 4 May 2007, Issa Sesay, p. 19; Transcript of 26 October 2007, DIS-188, p. 17 (CS).
[1393] Transcript of 4 May 2007, Issa Sesay, p. 4; Transcript of 26 October 2007, DIS-188, pp. 45-51 (CS); Transcript of 24 January 2008, DIS-157, p. 56.
[1394] Transcript of 29 June 2006, TF1-117, p. 95.
[1395] Transcript of 19 July 2005, TF1-360, p. 107 (CS).
[1396] Transcript of 25 April 2008, DMK-039, p. 16.
[1397] Transcript of 4 July 2006, TF1-117, pp. 65-66, 95.
[1398] Transcript of 9 June 2008, DAG-080, pp. 22-23.
[1399] Transcript of 25 January 2008, DIS-157, p. 49; Transcript of 6 June 2008, DAG-080, p. 13.

disarmament.[1400]

1.3. The RUF from November 1996 to May 1997

1.3.1. Military Structure and Operations

735. In November 1996, when Sankoh and President Kabbah signed the Abidjan Peace Accord in Cote d'Ivoire, Sankoh promoted Bockarie to Major. He retained his assignment as BGC.[1401] After Tarawallie was killed at the end of 1996, Bockarie assumed Tarawallie's assignment of BFC.[1402] In November 1996, the RUF had two Area Commanders in Kenema District, one in Port Loko District, one in Kailahun District and one in Pujehun District.[1403]

736. In February 1997, Sankoh was arrested at an airport in Nigeria on allegations that he was carrying arms.[1404] The civilian representatives of the War Council issued an announcement over the radio claiming the right to assume control of the RUF. However, Bockarie had them arrested and put himself in control of the movement.[1405] Although Sankoh continued to occupy the position of overall Leader and continued to communicate with the RUF via radio from Nigeria, Bockarie acted as the *de facto* Commander-in-Chief for the next two and a half years.[1406]

[1400] Transcript of 9 June 2008, DAG-101, p. 87; Transcript of 25 October 2007, DIS-069, pp. 41-42; Transcript of 10 March 2006, TF1-108, p. 115 (CS); Transcript of 5 June 2008, DAG-048, p. 89; Transcript of 1 November 2007, DIS-188, p. 27.

[1401] Transcript of 4 May 2007, Issa Sesay, p. 60; Transcript of 24 January 2005, TF1-071, p. 36; Transcript of 20 July 2005, TF1-360, pp. 3-4 (CS); Consequential Order on Judicial Notice, Annex I, Fact M; *see also* Transcript of 22 November 2005, TF1-045, p. 39.

[1402] Transcript of 24 January 2005, TF1-071, p. 37; Transcript of 3 April 2006, TF1-168, p. 7 (CS); Transcript of 1 August 2006, TF1-371, p. 76; Transcript of 26 October 2007, DIS-188, p. 51 (CS); Transcript of 14 July 2005, TF1-361, p. 56 (CS); Transcript of 28 July 2005, TF1-036, p. 24 (CS).

[1403] Major Isaac Mongor and Staff Captain Matthew Kennedy Sesay were in Kenema; Major Denis Mingo (Superman) was in Port Loko District; Staff Captain Peter Vandi was in Kailahun District; and Captain Michael Rogers was in Pujehun District: *see* Transcript of 4 May 2007, Issa Sesay, pp. 7, 49-50; Transcript of 14 July 2005, TF1-361, pp. 56-57 (CS); Transcript of 19 July 2005, TF1-360, p. 104 (CS); Transcript of 24 November 2005, TF1-045, pp. 92-93, 97-98 (CS); Transcript of 9 March 2006, TF1-108, p. 86 (CS).

[1404] Transcript of 25 April 2005, TF1-362, p. 3 (CS); Transcript of 22 November 2005, TF1-045, p. 35 (CS); Transcript of 31 March 2006, TF1-168, pp. 53-54 (CS); Transcript of 1 August 2006, TF1-371, p. 78 (CS).

[1405] Philip Palmer, Fayia Musa, Deen-Jalloh, Gbassay James and Dr. Barrie faced a court martial board and were under arrest until Sankoh's return as leader of the RUF following the Lomé Peace Accord in July 1999: Transcript of 28 July 2005, TF1-036, pp. 19-22, 30-31 (CS).

[1406] Transcript of 18 April 2008, Morris Kallon, pp. 6-7; Transcript of 31 July 2006, TF1-371, p. 23 (CS); Transcript of 10 January 2008, DIS-163, p. 29; Transcript of 3 April 2006, TF1-168, p. 66 (CS); *see also* Transcript of 20 July 2005, TF1-360, p. 19 (CS); Transcript of 22 July 2005, TF1-360, pp. 25-26 (CS); Transcript of 26 January 2005, TF1-071, p. 10.

737. In March 1997, Sankoh sent a radio message to Bockarie from Nigeria issuing promotions to certain Commanders. Bockarie was promoted from Major to Colonel, while Sesay was simultaneously reinstated in his rank as Major and further promoted to Lieutenant Colonel. Bockarie and Sesay had been *de facto* operating as BFC and BGC since Tarawallie's death in late 1996, thereupon, Sankoh officially confirmed these assignments.[1407]

738. At the same time, Sankoh promoted Superman and Isaac Mongor from Major to Colonel and appointed them as Area Commanders for the Western Jungle and Kangari Hills (Northern Jungle) respectively.[1408] Vandi was promoted from Major to Lieutenant Colonel[1409] and maintained his assignment as Area Commander for Kailahun District.[1410] Gibril Massaquoi was promoted from Staff Captain to Lieutenant Colonel and was named RUF Spokesperson.[1411] Mike Lamin was promoted to Colonel.[1412]

739. Throughout early 1997, the RUF was functioning in the Northern and Western Jungles, as well as in certain bases in Kailahun District.[1413] The various Area Commanders reported to Bockarie and Sesay.[1414] In late 1997 Bockarie relocated the RUF Headquarters within Kailahun District from Giema to Buedu, due to Kamajor attacks.[1415]

[1407] Transcript of 4 May 2007, Issa Sesay, pp. 65-66; Transcript of 22 June 2007, Issa Sesay, p. 21; Transcript of 20 July 2005, TF1-360, p. 4 (CS); Transcript of 22 May 2007, Issa Sesay, p. 18; Transcript of 14 February 2008, DIS-085, pp. 18-19 (CS); Transcript of 19 October 2007, DIS-069, pp. 95-97; Transcript of 24 January 2008, DIS-157, pp. 55, 61; Transcript of 4 May 2007, Issa Sesay, pp. 65-66; Transcript of 24 July 2006, TF1-371, pp. 93-94 (CS);

[1408] Transcript of 4 May 2007, Issa Sesay, p. 65; Transcript of 29 July 2005, TF1-036, p. 40 (CS); Transcript of 24 July 2006, TF1-371, pp. 80, 86 (CS); Transcript of 15 November 2005, TF1-366, p. 86 (CS); Transcript of 24 January 2005, TF1-071, p. 37; *see also* Transcript of 20 July 2005, TF1-360, p. 96 (CS); Transcript of 22 July 2005, TF1-360, p. 36 (CS) and Transcript of 21 June 2006, TF1-367, p. 48 (CS), stating that at the time of the coup Superman was in the Western Jungle.

[1409] Transcript of 4 May 2007, Issa Sesay, p. 66; Transcript of 3 April 2006, TF1-168, p. 5 (CS).

[1410] Transcript of 4 May 2007, Issa Sesay, p. 66.

[1411] Transcript of 4 May 2007, Issa Sesay, p. 66; Transcript of 24 July 2006, TF1-371, p. 93 (CS); Transcript of 3 April 2006, TF1-168, p. 5 (CS); Transcript of 24 January 2008, DIS-157, p. 61.*See generally* Transcript of 18 July 2006, TF1-041, p. 14 (CS), stating that Gibril Massaquoi served as RUF spokesman since Sankoh was in Abidjan; *see also* Transcript of 1 August 2006, TF1-371, pp. 86-87, stating that when Sankoh made the several promotions in March 1997 Gibril Massaquoi had already been acting as RUF spokesman.

[1412] Transcript of 25 January 2008, DIS-157, p. 25; Transcript of 17 July 2006, TF1-041, p. 80; Transcript of 11 July 2006, TF1-041, p. 35; Transcript of 29 July 2005, TF1-036, p. 40 (CS).

[1413] Transcript of 22 October 2007, DIS-069, pp. 68-76.

[1414] Transcript of 22 October 2007, DIS-069, pp. 68-76; Transcript of 22 June 2007, Issa Sesay, pp. 23-24.

[1415] Transcript of 4 May 2007, Issa Sesay, p. 65; Transcript of 7 March 2006, TF1-108, pp. 84-85 (CS). *See generally* Transcript of 21 January 2005, TF1-071, p. 5, stating that the RUF headquarters were in Buedu in 1998; Transcript of 28 July 2005, TF1-036, pp. 30-31 (CS), stating that the headquarters of the RUF were in Buedu when the coup took place; Transcript of 11 November 2005, TF1-366, p. 9 (CS), stating that Giema was the RUF headquarters in 1996.

1.3.2. The Role of the Accused

1.3.2.1. Sesay

740. Sesay returned to Giema, the RUF's primary base, in October 1996 and remained there until May 1997. Bockarie was in Buedu at this time.[1416] As acting BGC effectively from late 1996, Sesay had access to radio communication.[1417] By March 1997, Sesay was confirmed in his assignment as BGC and promoted to the rank of Lieutenant Colonel.

1.3.2.2. Kallon

741. Kallon was based at Northern Jungle, in Kangari Hills, from November 1996 to June 1997. He was promoted to Major in March 1997 by Sankoh and served in the Northern Jungle under the Area Commander Isaac Mongor. [1418] From 1996 onward, Kallon was senior in rank to Gbao.[1419]

1.3.2.3. Gbao

742. Gbao remained the OSC and Overall IDU Commander in Kailahun District between November 1996 and May 1997.[1420]

1.4. The RUF during the Junta Government (May 1997 to February 1998)

1.4.1. The AFRC Coup

743. On 25 May 1997, the SLPP Government of President Ahmad Tejan Kabbah was overthrown by a military *coup d'état* led by soldiers of the Sierra Leone Army (SLA).[1421] SLA Corporal Tamba Gborie announced the coup over the radio and requested all senior military

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[1416] Transcript of 4 May 2007, Issa Sesay, p. 9; Transcript of 24 January 2008, DIS-157, p. 56. *See also* Transcript of 22 June 2007, Issa Sesay, p. 23; Transcript of 8 October 2007, DIS-080, p. 23; Transcript of 14 March 2006, TF1-330, p. 66 (CS).

[1417] Transcript of 26 October 2007, DIS-188, p. 57; Transcript of 29 July 2005, TF1-036, pp. 40, 42 (CS).

[1418] Transcript of 22 January 2008, DIS-174, p. 5 (CS); Transcript of 3 August 2005, TF1-036, pp. 23-24 (CS); Transcript of 15 November 2005, TF1-366, p. 85 (CS); Transcript of 18 April 2008, Morris Kallon, pp. 15-16; Transcript of 25 January 2008, DIS-157, p. 25; *see generally* Transcript of 25 April 2008, DMK-039, pp. 47-48; Transcript of 25 November 2005, TF1-045, pp. 7-8.

[1419] Transcript of 17 April 2008, Morris Kallon, p. 12.

[1420] *See* Transcript of 30 June 2006, TF1-117, pp. 103-104, stating that Gbao was in Kailahun up until Kabbah was overthrown.

[1421] Consequential Order on Judicial Notice, Annex I, Fact O; Human Rights Watch, Murder, p. 7.

and police Commanders to report to the SLA.[1422] The SLA's chief grievance was that the creation of the Kamajors as a military auxiliary force was unconstitutional, prolonged the war and fuelled corruption, nepotism and tribalism.[1423]

744. The chief plotters of the coup were all members of the football team of the 1st Battalion of the SLA[1424] and included Abu Sankoh aka Zagalo, Sergeant Tamba Alex Brima ("Gullit"), Sergeant Ibrahim Bazzy Kamara ("Bazzy"), Santigie Kanu ("Five-Five"), Idrissa Kamara ("Leather Boot") and Corporal Hassan Papah Bangura ("Bomb Blast").[1425]

745. The coup members immediately freed Major Johnny Paul Koroma from Pademba Road prison in Freetown where he had been held after an earlier coup attempt.[1426] The group called themselves the Armed Forces Revolutionary Council ("AFRC") and announced over the radio that Johnny Paul Koroma was their leader.[1427]

746. On 28 May 1997, Johnny Paul Koroma published a Proclamation in the Sierra Leone Gazette that suspended the Constitution and any laws of Sierra Leone that were inconsistent with AFRC decrees; dissolved Parliament and all political parties; and established the Council's authority to enact laws and detain persons in the public interest.[1428]

1.4.2. The RUF and the AFRC Form an Alliance

747. Shortly after the AFRC seized power, Johnny Paul Koroma contacted Sankoh in Nigeria to invite the RUF to form an alliance. Sankoh accepted the invitation.[1429]

748. On 28 May 1997, Sankoh issued a public order to Bockarie over the BBC and the Sierra Leone Broadcasting Station instructing the RUF Commanders to cease hostilities and

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[1422] Exhibit 119, AFRC Trial Transcript of 16 May 2005, TF1-334, pp. 26-27; Transcript of 11 July 2005, TF1-361, p. 52 (CS).
[1423] Transcript of 26 September 2005, TF1-184, p. 85; Transcript of 7 July 2006, TF1-334, p. 96 (CS).
[1424] Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, pp. 12-13.
[1425] Transcript of 14 October 2004, George Johnson, pp. 24-26; see also Transcript of 17 May 2005, TF1-334, p. 14 (92*bis*); Transcript of 22 November 2005, TF1-045, pp. 58-59.
[1426] Transcript of 11 November 2005, TF1-366, p. 23 (CS); *see also* Exhibit 181, NPWJ Conflict Mapping Report, p. 31.
[1427] Consequential Order on Judicial Notice, Annex I, Facts O and P; Human Rights Watch, Murder, p. 7; Exhibit 119, AFRC Trial Transcript of 16 May 2005, TF1-334, p. 44.
[1428] Exhibit 149, Proclamation, Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation, 1997, Public Notice No. 3 of 1997, 28 May 1997. Also filed as Exhibit 120A.
[1429] Consequential Order on Judicial Notice, Annex I, Fact R; Transcript of 26 January 2005, TF1-071, p. 57-58; Transcript of 18 November 2005, TF1-045, p. 53.

unite with the AFRC. Sankoh further stated that he would issue subsequent orders to Commanders through Koroma.[1430] Sankoh also contacted Colonel Jungle, Charles Taylor's Liberian bodyguard and instructed him to send a radio message to Bockarie in Buedu ordering the RUF to work with Koroma's government.[1431]

749. The RUF spokesperson, Eldred Collins, subsequently issued a radio broadcast proclaiming that the AFRC and RUF movements would work cooperatively to defend Sierra Leone.[1432]

750. As the SLA had been deployed throughout Sierra Leone prior to the coup, the AFRC quickly took control of the major urban centres of Freetown, Bo, Kenema, Koidu, Pujehun, Makeni and Bonthe.[1433] Their positions were reinforced by RUF fighters who moved from the bush to join the AFRC in towns and villages across the country.[1434] The Junta's forces were also strengthened by large numbers of Liberian STF fighters, who had formerly fought alongside the SLA against the RUF, but deserted the SLA after the coup.[1435]

751. Bockarie sent a message to Superman in the Western Area instructing him to move with his troops to Freetown.[1436] Koroma dispatched soldiers to greet the RUF fighters in the

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[1430] Exhibit 17, SLBS Radio Transcript of 28 May 1997; Transcript of 4 May 2007, Issa Sesay, p. 69; Transcript of 22 June 2007, Issa Sesay, p. 41; Transcript of 11 April 2008, Morris Kallon, p. 99; Transcript of 18 November 2005, TF1-045, pp. 52-53.Transcript of 21 June 2006, TF1-367, p. 48; Exhibit 119, AFRC Trial Transcript of 16 May 2005, TF1-334, pp. 44-45; Transcript of 18 January 2005, TF1-071, pp. 111-112; Transcript of 11 January 2008, DIS-163 pp. 7-8; Transcript of 6 November 2007, DIS-281, p. 97 (CS); Transcript of 5 May 2008, DMK-032, p. 11; Transcript of 1 May 2008; DMK-072, pp. 97-98.

[1431] Transcript of 7 November 2005, TF1-366, pp. 65-66 (CS); Transcript of 22 June 2007, Testimony of Issa Sesay, pp. 30, 40-41; Transcript of 26 October 2007, DIS-188, p. 60 (CS).

[1432] Exhibit 119, AFRC Trial Transcript of 16 May 2005, TF1-334, p. 54; *See generally* Transcript of 28 April 2005, TF1-114, p. 49; Transcript of 3 April 2006, TF1-168, p. 73 (CS).

[1433] Exhibit 181, NPWJ Conflict Mapping Report, p. 31; Transcript of 6 June 2008, DAG 080, p. 42; Transcript of 13 May 2005, TF1-125, p. 41; Transcript of 7 July 2005, TF1-122, p. 55.

[1434] Transcript of 19 October 2007, DIS-069, pp. 102-103; Transcript of 14 October 2004, George Johnson, p. 33; Transcript of 1 May 2008, DMK-072, p. 98; Transcript of 5 May 2008, DMK-032, p. 11; Exhibit 181, NPWJ Conflict Mapping Report, p. 31; *see also* Transcript of 20 July 2005, TF1-360, p. 7 (CS); Transcript of 24 January 2005, TF1-071, p. 60.

[1435] The Chamber recalls that the private security company Executive Outcomes trained and equipped the Special Task Force to fight on behalf of President Kabbah's Government: *supra* para. 17.

[1436] Transcript of 19 October 2004, George Johnson, pp. 5-6; Transcript of 14 July 2005, TF1-361, p. 61 (CS); Transcript of 15 January 2008, DIS-214, pp. 47-48 (CS); *see also* Transcript of 29 April 2008, DMK-162, pp. 90-91.Transcript of 24 January 2005, TF1-071, p. 45; Transcript of 21 June 2006, TF1-367, p. 48 (CS); Transcript of 6 November 2007, DIS-281, p. 98 (CS); Transcript of 4 May 2007, Issa Sesay, p. 69; Transcript of 26 October 2007, DIS-188, p. 61 (CS).

Western Area and escort them to Freetown.[1437] Superman was the first RUF Commander to move to Freetown and upon his arrival he contacted Bockarie and informed him that the situation was secure.[1438]

752. On or about 29 or 30 May 1997, Bockarie travelled from the RUF Headquarters in Buedu to meet Sesay in Giema in Kailahun District, from where they departed for Daru, accompanied by many other senior RUF members. They were met en route by a group of SLA soldiers who had been sent by Johnny Paul Koroma to escort Bockarie to Freetown. [1439] The RUF and the SLA soldiers embraced and spoke of peace before travelling together to the SLA base in Daru, Kailahun Town.[1440]

753. Bockarie continued with a convoy of troops from Daru to Freetown, stopping at various towns along the way including in Bo District.[1441] Superman and others met Bockarie and his troops outside of Freetown and escorted them to Benguema on the Freetown Peninsula, arriving almost two weeks after the coup.[1442] Bockarie and Superman resided at Benguema Barracks where Superman commanded a large battalion both in Benguema and the surrounding communities.[1443]

[1437] Transcript of 21 June 2006, TF1-367, p. 49 (CS); Transcript of 26 October 2007, DIS-188, p. 61 (CS).
[1438] Transcript of 6 November 2007, DIS-281, p. 98 (CS).
[1439] Transcript of 11 November 2005, TF1-366, pp. 9,12 (CS); Transcript of 31 March 2006, TF1-168, p. 72 (CS); Transcript of 4 May 2007, Issa Sesay, pp. 69, 71-74; Transcript of 21 June 2006, TF1-367, p. 49 (CS); Transcript of 26 October 2007, DIS-188, p. 61 (CS); Transcript of 6 November 2007, DIS-281, p. 98 (CS); *see generally* Transcript of 24 July 2006, TF1-371, pp. 81, 86 (CS), stating that at the time of the coup Bockarie and Sesay were the number 1 and 2 men in Kailahun District.
[1440] Transcript of 4 May 2007, Issa Sesay, pp. 69-71; Transcript of 7 November 2005, TF1-366, pp. 59-60 (CS); Transcript of 31 March 2006, TF1-168, pp. 62, 72 (CS); Transcript of 10 July 2006, TF1-041, p. 19 (CS); Transcript of 27 October 2007, DIS-188, p. 61 (CS).
[1441] Transcript of 4 May 2007, Issa Sesay, p. 74; Transcript of 7 November 2005, TF1-366, p. 60 (CS); Transcript of 10 July 2006, TF1-041, p. 19 (CS); Transcript of 6 November 2007, DIS-281, pp. 99-100 (CS); Transcript of 5 May 2008, DMK-116, pp. 49-50; At the time, the AFRC/RUF alliance had been made, RUF came out of the bush to work with the AFRC in Town; Transcript of 19 October 2007, DIS-069, pp. 102-103; Transcript of 14 October 2004, George Johnson, p. 33; Transcript of 1 May 2008, DMK-072, p. 98; Transcript of 5 May 2008, DMK-032, p. 11; The SLA had deployments in most of the towns in Sierra Leone, the AFRC quickly took control in the major towns of Freetown, Bo, Kenema, Koidu, Pujehun, Makeni and Bonthe; Exhibit 181, NPWJ Conflict Mapping Report, p. 24367; Transcript of 6 June 2008, DAG-080, p. 42; Transcript of 13 May 2005, TF1-125, p. 41; Transcript of 7 July 2005, TF1-122, p. 55.
[1442] Transcript of 6 November 2007, DIS-281, pp. 99-101 (CS); Transcript of 9 November 2007, DIS-281, pp. 3-5 (CS); Transcript of 5 May 2008, DMK-116, pp. 49-53; Transcript of 29 April 2008, DMK-162, pp. 90-91; Transcript of 4 May 2007, Issa Sesay, pp. 74, 76-77; Transcript of 14 July 2005, TF1-361, pp. 63-64 (CS); Transcript of 10 July 2006, TF1-041, pp. 19, 22 (CS); Transcript of 7 November 2005, TF1-366, p. 60 (CS).
[1443] Transcript of 6 November 2007, DIS-281, p. 100 (CS); Transcript of 9 November 2007, DIS-281, pp. 3-5 (CS); *See also*: Transcript of 5 May 2008, DMK-116, pp. 52-53; Transcript of 29 April 2008, DMK-162, pp. 90-91; Transcript of 4 May 2007, Issa Sesay, pp. 76-77; Transcript of 14 July 2005, TF1-361, pp. 63-64 (CS); *see generally*

1.4.3. The Junta Government in Freetown

1.4.3.1. The AFRC Supreme Council

754. The governing body of the Junta Government was referred to alternately as the AFRC Council[1444] or the Supreme Council.[1445] The AFRC Supreme Council included members of the former SLA, RUF and civilians. It was the highest decision-making body in the Junta regime and the sole *de facto* executive and legislative authority within Sierra Leone during the Junta period.[1446]

755. The Chairman of the AFRC Supreme Council was Johnny Paul Koroma and the Deputy Chairman was Sankoh. In Sankoh's absence, former SLA SAJ Musa was the Deputy Chairman.[1447] Under the authority of the Chairman and Deputy Chairman were three Political Liaison Officers, Zagalo (PLO 1), Gullit (PLO 2) and Bazzy (PLO 3), all former SLA soldiers.[1448] The former SLA members of the Supreme Council were generally known as "Honourables."[1449] The RUF members included Bockarie, Sesay, Kallon, Gibril Massaquoi, Mike Lamin, Eldred Collins, Isaac Mongor and Superman, these last three being Liberian nationals.[1450]

Transcript of 10 July 2006, TF1-041, p. 22 (CS), stating that when the witness travelled to Freetown with Bockarie when the Junta began, some people from Freetown met Bockarie's group outside of Freetown to escort them into the city.

[1444] Exhibit 6, The Sierra Leone Gazette, Govt. Notice No. 215, Armed Forces Revolutionary Council Secretariat, 18 September 1997 [Exhibit 6, AFRC Council Members]; Exhibit 150, The Sierra Leone Gazette, Govt. Notice No. 215, , Armed Forces Revolutionary Council Secretariat, 4 September 1997.

[1445] Exhibit 39, Proposal for Integration, p. 2; Transcript of 4 May 2007, Issa Sesay, pp. 97-98; Exhibit 119, AFRC Trial Transcript of 16 May 2005, TF1-334, p. 89; Transcript of 18 November 2005, TF1-045, p. 81 (CS). The Chamber has adopted the term "AFRC Supreme Council" throughout.

[1446] Consequential Order on Judicial Notice, Annex I, Facts S-U. Exhibit 150, The Sierra Leone Gazette No. 52, The Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation, 1997, Government Notice No. 215, 4 September 1997; Transcript of 18 October 2004, George Johnson, pp. 117-118; Transcript of 20 July 2006, TF1-371, p. 31 (CS); Transcript of 4 May 2007, Issa Sesay, p. 85; *see also* Exhibit 120d, Establishment of Council of Secretaries, SCSL Registry pp. 16892-16893.

[1447] Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, pp. 2-3; Transcript of 6 July 2006, TF1-334, pp. 92-93 (CS); Transcript of 28 July 2006, TF1-371, pp. 47-48 (CS); Transcript of 4 May 2007, Issa Sesay, p. 87.

[1448] Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, pp. 2-3; Transcript of 20 July 2006, TF1-371, pp. 24-25 (CS); Transcript of 22 November 2005, TF1-045, p. 93; Transcript of 7 July 2006, TF1-334, p. 99 (CS); Exhibit 224, AFRC Minutes of 11 August, SCSL Registry p. 00009772.

[1449] Exhibit 119, AFRC Trial Transcript of 16 May 2005, TF1-334, p. 92; Transcript of 28 July 2005, TF1-036, p. 52 (CS); Transcript of 26 September 2005, TF1-184, p. 86; Transcript of 11 November 2005, TF1-366, p. 23 (CS); Transcript of 20 July 2006, TF1-371, pp. 24-25 (CS); Transcript of 14 April 2008, Morris Kallon, pp. 20-21.

[1450] Exhibit 6, AFRC Council Members; Transcript of 20 July 2006, TF1-371, p. 32 (CS); Transcript of 18 November 2005, TF1-045, p. 81 (CS); Exhibit 184, AFRC Minutes of 9 December 1997; Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, p. 8. Although Sesay is identified as a Colonel in Exhibit 6, the Chamber finds that he was a Lieutenant Colonel during the Junta period: Transcript of 4 May 2007, Issa Sesay, p. 89; Transcript of 22 October 2007, DIS-069, pp. 76-81.

756. The Council did not vote on issues as significant decisions were made by Koroma, SAJ Musa and certain other Honourables.[1451] The major issues discussed by the Council were the security of the Junta; revenue generation; the resolution of conflicts between the AFRC and the RUF; looting; and harassment of civilians.[1452]

757. An advisory Council of Secretaries to the AFRC Supreme Council was established to execute its policies and directives.[1453]

1.4.3.2. Government Ministries

758. Despite an order from Sankoh that no RUF members were to be given ministerial positions or participate in politics, RUF members Peter Vandi, SYB Rogers, PS Binda, Lawrence Womandia, and Eldred Collins were all appointed as Deputy Ministers.[1454] These appointments were approved by Bockarie and Sesay as part of a proposal to integrate the RUF into the AFRC regime.[1455]

759. Other RUF members holding positions in the government included Isaac Mongor, who was responsible for the prevention of looting in Freetown[1456] and Mike Lamin who was the Director of Intelligence.[1457]

760. SAJ Musa was entrusted with responsibility for the Mining Unit.[1458] This was a critical government position as generating revenue from taxation was difficult and so the Junta relied upon alluvial mining proceeds for financial support.[1459] The key mining areas were in Kono

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[1451] Transcript of 28 July 2006, TF1-371, p. 61 (CS).
[1452] Transcript of 20 July 2006, TF1-371, pp. 34-35 (CS); *see also* Transcript of 8 May 2007, Issa Sesay, pp. 12-13; Exhibit 184, AFRC Minutes of 9 December 1997; Exhibit 224, AFRC Minutes of 11 August 1997; Transcript of 18 November 2005, TF1-045, pp. 85, 88-89 (CS).
[1453] Exhibit 119, AFRC Trial Transcript of 20 June 2005, TF1-334, p. 94; Exhibit 120d, AFRC Decree No. 2, Establishment of Council of Secretaries, p. 16892 [Establishment of Council of Secretaries].
[1454] Exhibit 36, Salute Report of Sesay, p. 3; Transcript of 22 June 2007, Issa Sesay, p. 54; Transcript of 26 January 2005, TF1-071, pp. 35-36; Transcript of 3 August 2005, TF1-036, pp. 67-68 (CS); Transcript of 31 July 2006, TF1-371, p. 114 (CS); Transcript of 22 October 2007, DIS-069, p. 80.
[1455] Exhibit 39, Proposal for Integration, p. 2.
[1456] Transcript of 11 April 2008, Morris Kallon, pp. 114-115; Transcript of 8 May 2007, Issa Sesay, p. 10; Exhibit 39, Proposal for Integration, p. 2; Transcript of 31 July 2006, TF1-371, p. 17 (CS).
[1457] Transcript of 11 April 2008, Morris Kallon, pp. 114-115; Transcript of 8 May 2007, Issa Sesay, p. 10; Transcript of 1 August 2006, TF1-371, pp. 30-31 (CS).
[1458] Transcript of 3 February 2005, TF1-012, p. 58; Transcript of 29 April 2005, TF1-060, p. 104 (CS); Transcript of 6 December 2005, TF1-184, p. 62 (CS); Transcript of 31 July 2006, TF1-371, p. 57 (CS).
[1459] Transcript of 20 July 2006, TF1-371, pp. 34-35 (CS); *see also* Exhibit 181, NPWJ Conflict Mapping Report, p. 24246.

District and in Tongo Field in Kenema District.[1460]

1.4.3.3. Military Command

761. The Chief of Defence Staff, FSY Koroma, and the Army Chief of Staff, SO Williams, oversaw the military and reported to Johnny Paul Koroma.[1461] A proposal by Bockarie to integrate the armed forces of the RUF and the AFRC, making Bockarie and Sesay respectively second-in-command to the Chief of Defence Staff FSY Koroma and to the Army Chief of Staff SO Williams, was rejected.[1462]

762. Senior RUF officers were consequently left without official appointments within the Junta military structure and the RUF retained its own command structure, with the notable difference that Bockarie was officially subordinate to Johnny Paul Koroma.[1463]

763. The failure to integrate the two military organisations into a unitary command structure led to misunderstandings and conflicts. While some AFRC fighters obeyed orders from RUF Commanders, others would not.[1464] Lower-ranking RUF fighters disobeyed orders from their senior officers. The AFRC considered this to be unacceptable as it was contrary to conventional military discipline.[1465] Many RUF fighters felt that the AFRC did not respect the RUF as an organisation.[1466]

764. By early September 1997, Bockarie had also become disillusioned with the RUF's limited role in the AFRC government. Bockarie was particularly aggrieved by the AFRC's disregard for the RUF's advice on military matters, such as when Johnny Paul Koroma ignored

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[1460] Transcript of 3 February 2005, TF1-012, p. 58; Transcript of 29 April 2005, TF1-060, p. 104 (CS); Transcript of 6 December 2005, TF1-184, p. 62 (CS); Transcript of 31 July 2006, TF1-371, p. 57 (CS).
[1461] Transcript of 4 May 2007, Issa Sesay, p. 87; Transcript of 11 November 2005, TF1-366, pp. 21-22 (CS); Exhibit 119, AFRC Trial Transcript of 17 May 2005, pp. 18-19; Transcript of 20 July 2006, TF1-371, p. 31 (CS); Transcript of 19 October 2007, DIS-069, p. 109; Transcript of 22 June 2007, Issa Sesay, p. 56; Transcript of 23 November 2005, TF1-045, pp. 20-21; Transcript of 6 July 2006, TF1-334, pp. 87-88 (CS).
[1462] Exhibit 39, Proposal for Integration, p. 1; Transcript of 11 April 2008, Morris Kallon, pp. 114-115; Transcript of 29 July 2005, TF1-036, pp. 37-38 (CS); Transcript of 31 July 2006, TF1-371, pp. 20-21 (CS).
[1463] Transcript of 8 May 2007, Issa Sesay, pp. 8-10; Transcript of 26 October 2007, DIS-188, p. 66 (CS); Transcript of 15 November 2005, TF1-366, pp. 89-90 (CS); Transcript of 22 June 2006, TF1-367, pp. 93-94 (CS).
[1464] Transcript of 15 January 2008, DIS-214, p. 46 (CS); *see also* Transcript of 25 July 2005, TF1-360, pp. 3-4 (CS).
[1465] Transcript of 15 January 2008, DIS-214, p. 54 (CS); Transcript of 22 July 2005, TF1-360, pp. 39-40 (CS).
[1466] TF1-360 referred to the alliance as "a marriage of uneven and unequal partners": Transcript of 22 July 2005, p. 37. *See also* Exhibit 277, Situation Report of Blackguard Commander to the Leader, date unknown, p. 9673.

his recommendation to attack ECOMOG forces outside Freetown.[1467] Also motivated by fears that AFRC fighters would make an attempt on his life, Bockarie relocated to Kenema.[1468]

1.4.4. The Junta Government in Bo, Kenema and Kailahun Districts

1.4.4.1. Kailahun District

765. A number of RUF fighters remained in Kailahun District where they worked alongside the AFRC, particularly in Daru.[1469] In addition to Gbao, senior Commanders included the Area Commander Denis Lansana and the overall G5 Commander Prince Taylor.[1470]

766. Combining the SLA strongholds with the RUF held territory, the RUF and AFRC controlled much of Kailahun District,[1471] including Pendembu,[1472] Kailahun Town,[1473] Bunumbu[1474] Giema,[1475] Buedu[1476] and Daru.[1477]

1.4.4.2. Bo District

[1467] Transcript of 22 November 2005, TF1-045, pp. 60, 62-63; Transcript of 3 April 2006, TF1-168, p. 15 (CS); Transcript of 22 July 2005, TF1-360, p. 39 (CS); Transcript of 14 July 2005, TF1-361, p. 75 (CS); Transcript of 24 January 2005, TF1-071, pp. 61-62; *see also* Transcript of 11 January 2008, Abu Bakar Mustapha, p. 11; Exhibit 35, Salute Report of Bockarie, p. 3; ; Transcript of 29 July 2005, TF1-036, p. 60 (CS).

[1468] Exhibit 35, Salute Report of Sam Bockarie, p. 2361; Transcript of 14 July 2005, TF1-361, p. 75 (CS); Transcript of 22 July 2005, TF1-360, p. 39 (CS); Transcript of 22 November 2005, TF1-045, pp. 60, 62-63; Transcript of 6 July 2006, TF1-334, p. 95 (CS); Transcript of 10 July 2006, TF1-041, p. 27 (CS); Transcript of 8 May 2007, Issa Sesay, pp. 8-10.

[1469] The AFRC had a strong presence in Daru as the SLA had been stationed there prior to the coup. Transcript of 22 June 2007, Issa Sesay, p. 72-73; Transcript of 2 January 2005, TF1-071, pp. 48-49; Exhibit 119, AFRC Trial Transcript of 17 June 2005, TF1-334, p. 55; Transcript of 22 October 2007, DIS-069, p. 77; Transcript of 26 October 2007, DIS-188, p. 65 (CS).

[1470] Transcript of 22 June 2007, Issa Sesay, p. 72-73; Transcript of 1 August 2006, TF1-371, p. 117 (CS); Transcript of 21 January 2008, DIS-174, pp. 51-52 (CS); *see generally* Transcript of 11 July 2006, TF1-296, p. 21 (CS), stating that Prince Taylor was the overall G5 Commander in Kailahun between 1997 and 2000.

[1471] Transcript of 22 June 2006, TF1-367, pp. 94-95 (CS).

[1472] Transcript of 21 January 2008, DIS-174, pp. 51-52 (CS); *see* Transcript of 26 October 2007, DIS-188, pp. 64-65 (CS) (stating he was the MP Commander in Pendembu shortly after the Junta began).

[1473] *See generally* Transcript of 6 March 2006, TF1-113, pp. 65-66 (CS), stating that she lived in Kailahun Town side by side the RUF, who were colleagues of her husband; *see also* Transcript of 9 March 2006, TF1-108, p. 96 (CS), stating that during the Junta period Gbao would summon the civilian Commanders in Kailahun Town and tell them that the RUF needed the civilians to carry arms.

[1474] Transcript of 6 March 2006, TF1-113, pp. 18-19.

[1475] Transcript of 22 October 2007, DIS-069, pp. 67-68; *see generally* Transcript of 9 March 2006, TF1-108, p. 29 (CS), stating that no civilian entered Giema between 1996 and 1999 voluntarily, which implies that during the smaller time frame of the Junta period, the RUF controlled Giema as well.

[1476] Transcript of 22 October 2007, DIS-069, pp. 67-68; Transcript of 1 November 2007, DIS-188, p. 27 (CS); Transcript of 22 June 2006, TF1-367, pp. 26-27 (CS), stating that in November 1997 the witness was summoned to Buedu by Bockarie.

[1477] Exhibit 119, AFRC Trial Transcript of 17 June 2005, TF1-334, p. 55; Transcript of 26 October 2007, DIS-188, p. 65 (CS).

767. Unlike in Kailahun, the Junta regime did not enjoy consolidated territorial control over Bo District from the outset. By June 1997, only some parts of the District were controlled jointly by AFRC and RUF forces.[1478] The AFRC had a Secretariat in Bo Town that was headed by the Secretary of State AF Kamara and the Brigade Commander Boysie Palmer. ABK, also known as Abu Bakar, managed the Secretariat.[1479]

768. Members of the RUF including Bockarie passed through Bo District in the early months of the Junta regime, but it was not until August 1997 when Bockarie assigned Kallon to Bo as the senior RUF Commander that an RUF contingent was based there. Kallon remained in Bo until February 1998.[1480] His responsibilities included arranging for RUF supplies from Freetown.[1481]

1.4.4.3. Kenema District

769. Within a week after the coup, numerous RUF fighters from various areas arrived in Kenema District.[1482] The AFRC and RUF set up a joint administration in Kenema Town.

770. Bockarie was based in Kenema Town after his departure from Freetown and he remained there until the overthrow of the Junta Government in February 1998.[1483] Bockarie communicated via radio with RUF troops throughout the country.[1484] Eddie Kanneh, an AFRC Honourable and the Secretary of State East in Kenema District, was also based in Kenema Town.[1485] He was subordinate to SAJ Musa and Johnny Paul Koroma.[1486]

771. Kanneh focused on diamond mining and other civilian affairs such as food

[1478] Transcript of 30 November 2005, TF1-054, p. 11 (CS).
[1479] Transcript of 8 December 2005, TF1-004, p. 28; Transcript of 21 April 2008, Hassan Deko Salu, p. 52; Transcript of 30 November 2005, TF1-054, p. 11 (C.S.); Transcript of 11 April 2008, Morris Kallon, p. 105. Transcript of 30 May 2007, Issa Sesay, p. 26; Transcript of 29 April 2005, TF1-060, p. 47-48.
[1480] Transcript of 21 April 2008, Hassan Deko Salu, pp. 53-55.
[1481] Transcript of 18 April 2008, Morris Kallon, p. 16.
[1482] Transcript of 12 May 2005, TF1-125, p. 97; Transcript of 13 May 2005, TF1-125, p. 41.
[1483] Transcript of 8 May 2007, Issa Sesay, pp. 8-10; Transcript of 8 July 2005, TF1-212, p. 4; Transcript of 29 July 2005, TF1-036, p. 30 (CS); Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, pp. 56-57; Transcript of 7 July 2005, TF1-122, p. 56.
[1484] Transcript of 3 August 2005, TF1-036, pp. 66-67 (CS).
[1485] Transcript of 7 July 2005, TF1-122, p. 56; Transcript of 12 May 2005, TF1-125, pp. 12-13; Transcript of 8 July 2005, TF1-212, p. 4; Transcript of 29 July 2005, TF1-036, p. 30 (CS); Transcript of 29 April 2005, TF1-060, p. 47.
[1486] Transcript of 13 May 2005, TF1-125, p. 39; Transcript of 10 May 2005, TF1-129, pp. 82-83 (CS); Transcript of 23 November 2005, TF1-045, p. 8; Transcript of 28 July 2006, TF1-371, p. 50 (CS).

procurement.[1487] Bockarie was more involved in military affairs,[1488] although he was also ultimately involved in mining at Tongo Field. Although Bockarie was officially subordinate to Kanneh, in the second half of the Junta regime Bockarie did not take orders from Kanneh and he appears to have possessed the same level of *de facto* authority.[1489]

1.4.5. The Role of the Accused

1.4.5.1. Sesay

772. On Bockarie's instructions, Sesay travelled from Daru to Freetown with approximately 30 fighters in the second week of June 1997.[1490] As noted above, Sesay was a member of the AFRC Supreme Council and from August 1997 onwards he attended Supreme Council meetings on a regular basis.[1491]

773. Bockarie's departure to Kenema in September 1997 placed Sesay in command of the RUF in Freetown.[1492] Sesay remained subordinate to Bockarie and received orders over the radio.[1493] As was the case with Bockarie, Sesay was subordinate to the Army Chief of Staff SO Williams and the Chief of Defence Staff FSY Koroma.[1494] Sesay left Freetown for Makeni in January 1998, as he feared he would be arrested after he had been accused of participating in the looting of the Iranian Embassy.[1495]

[1487] Transcript of 20 July 2006, TF1-371, p. 27 (CS); Transcript of 10 July 2006, TF1-041, p. 21 (CS); Transcript of 22 November 2007, DIS-124, pp. 100, 146-147; *see also* Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, p. 54.

[1488] Transcript of 22 November 2007, DIS-124, p. 101; *see also* Transcript of 29 July 2005, TF1-036, pp. 31-32 (CS), stating that with regard to fighting or attacks, the troops in Kenema would usually report to Bockarie over Eddie Kanneh.

[1489] Transcript of 16 May 2005, TF1-125, p. 96. *See also* Transcript of 29 July 2005, TF1-036, pp. 30-31 (CS).

[1490] Transcript of 4 May 2007, Issa Sesay, pp. 74-76; Transcript of 6 November 2007, DIS-281, pp. 99-100 (CS); Transcript of 7 November 2005, TF1-366, p. 60 (CS).

[1491] Exhibit 224, AFRC Minutes of 11 August, SCSL Registry p. 00009772; Transcript of 18 November 2005, TF1-045, pp. 83-90 (CS).

[1492] Transcript of 24 January 2008, DIS-157, p. 71 (CS); Transcript of 22 October 2007, DIS-069, pp. 76-81; Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, pp. 54, 57; Transcript of 24 January 2005, TF1-071, pp. 69-70, 78.

[1493] Transcript of 8 May 2007, Issa Sesay, p. 5; Transcript of 22 October 2007, DIS-069, p. 78.

[1494] Transcript of 4 May 2007, Issa Sesay, p. 91; Transcript of 22 June 2007, Issa Sesay, p. 45; Transcript of 7 November 2005, TF1-366, pp. 21-22 (CS); *see generally* Transcript of 19 October 2007, DIS-069, pp. 108-109, stating that Sesay operated as a liaison between the AFRC and RUF, and that Sesay would pick up shipments from FSY Koroma who would tell him how to distribute the goods.

[1495] Transcript of 8 May 2007, Issa Sesay, pp. 82-83, 88; Transcript of 14 February 2008, DIS-085, p. 30 (CS); Exhibit 35, Salute Report of Issa Sesay, p. 5; Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 68.

1.4.5.2. Kallon

774. On 3 June 1997, Kallon arrived at Teko Barracks in Makeni, where he was based until August 1997 when he was assigned to Bo.[1496] From August 1997 to February 1998, he was the senior RUF Commander in Bo District.[1497] Although Kallon was a member of the AFRC Supreme Council, it was often difficult for him to travel to Freetown due to Kamajor attacks. Nonetheless, the Chamber finds that from August 1997 onwards, Kallon also attended Supreme Council meetings on a reasonably regular basis. [1498]

1.4.5.3. Gbao

775. On Bockarie's instructions, Gbao remained in Kailahun District after the coup. At the time of the coup, Gbao was in Giema.[1499] In June 1997, Bockarie ordered Gbao to move from Giema to Kailahun Town.[1500] He remained the RUF OSC and Overall IDU Commander during the Junta period.[1501] The Chamber observes that it has not heard any evidence that Gbao later commuted to Freetown, met with the AFRC leaders or communicated with the Junta leaders during the Junta period.

1.5. The Intervention (February 1998)

776. Between 6 and 14 February 1998, ECOMOG forces acting on behalf of the ousted government of President Kabbah battled AFRC/RUF forces in Freetown and the Western Area.[1502] The Junta forces were ill-prepared; they soon expended their ammunition supplies and

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[1496] Transcript of 11 April 2008, Morris Kallon, pp. 24, 102; Transcript of 22 January 2008, DIS-174, p. 6 (CS); Transcript of 22 April 2008, DMK-087, p. 90; *see generally* Transcript of 11 November 2005, TF1-366, p. 22 (CS), stating that Kallon was based in Makeni during the Junta.

[1497] Transcript of 11 April 2008, Morris Kallon, p. 24; Transcript of 25 April 2008, DMK-039, p. 22; Transcript of 26 July 2005, TF1-360, p. 10 (CS); Transcript of 30 May 2007, Issa Sesay, p. 26-27; Transcript of 24 January 2005, TF1-071, pp. 71-72; Transcript of 23 October 2007, DIS-069, pp. 30-31; Transcript of 11 November 2005, TF1-366, p. 22 (CS); Transcript of 26 June 2006, TF1-367, p. 22 (CS).

[1498] Exhibit 224, AFRC Minutes of 11 August, SCSL Registry p. 00009772; Transcript of 19 October 2004, George Johnson, p. 120; Transcript of 31 July 2006, TF1-371, p. 119 (CS).

[1499] Transcript of 30 May 2007, Issa Sesay, p. 46.

[1500] Transcript of 23 October 2007, DIS-069, pp. 83-84; Transcript of 30 May 2007, Issa Sesay, pp. 46, 50; Transcript of 1 November 2007, DIS-188, p. 28 (CS).

[1501] Transcript of 25 January 200, DIS-157, p. 48; Transcript of 10 March 2006, TF1-108, pp. 115-116 (CS); Transcript of 21 January 2005, TF1-071, p. 9; Transcript of 17 April 2008, Morris Kallon, pp. 12-13; Transcript of 5 June 2008, DAG-048, p. 7; Transcript of 6 June 2008, DAG-080, pp. 44-45; Transcript of 1 November 2007, DIS-188, pp. 94-95 (CS); Transcript of 1 August 2006, TF1-371, p. 118 (CS)

[1502] Consequential Order on Judicial Notice, Annex I, Fact V; Exhibit 181, NPWJ Conflict Mapping Report, p. 154. This event is commonly referred to as the Intervention.

were forced to retreat.[1503] Kabbah's Government was restored to power in March 1998.[1504]

777. ECOMOG and CDF forces also successfully attacked Junta positions in towns such as Bo, Kenema, Koidu, Segbwema and Daru and the AFRC/RUF forces in these areas withdrew to join the main contingent retreating from Freetown.[1505]

1.5.1. Withdrawal from Freetown

778. The withdrawal of the RUF and AFRC troops from Freetown was unplanned and chaotic. They left Freetown via the Peninsula road and travelled eastwards through Juba, York, Tombo and Newton on the Makeni highway towards Masiaka.[1506]

779. Mike Lamin, Isaac Mongor and Superman were the most senior RUF Commanders in Freetown at the time.[1507] Bockarie was in Kenema District. After initially repelling Kamajor attacks, Bockarie abandoned Kenema Town and retreated to Kailahun District with his troops.[1508]

780. Upon hearing of the Intervention, Sesay wanted to reunite with his family and travelled from Makeni towards Freetown together with a number of other RUF fighters.[1509] Sesay met his family at RDF Junction in the Western Area, as well as a large group of AFRC/RUF members, including Johnny Paul Koroma, SAJ Musa, FSY Koroma, SO Williams, Superman, Mike Lamin, Peter Vandi and Isaac Mongor.[1510]

781. At the time of the Intervention, Kallon was in Bo[1511] and Gbao was in Kailahun.[1512]

[1503] Exhibit 119, AFRC Transcript of 16 June 2005, TF1-334, pp. 68, 93; Exhibit 389, Hederstedt Expert Report, p. 26774.
[1504] Consequential Order on Judicial Notice, Annex I, Fact V.
[1505] Transcript of 2 March 2006, TF1-113, p. 54; Transcript of 8 May 2007, Issa Sesay, pp. 94-95; Transcript of 11 April 2008, Morris Kallon, p. 128 (Bo Town); Transcript 21 November 2005, TF1-045, pp. 8, 9.
[1506] Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, p. 66.
[1507] Transcript of 14 April 2008, Morris Kallon, p. 9; Transcript of 26 January 2005, TF1-071, p. 55.
[1508] Transcript 21 November 2005, TF1-045, pp. 8, 9; Transcript of 9 May 2007, Issa Sesay, pp. 13-15.
[1509] Transcript of 8 May 2007, Issa Sesay, pp. 82-83, 88; Transcript of 14 February 2008, DIS-085, pp. 30-31 (CS); Transcript of 14 October 2004, George Johnson, p. 113.
[1510] Transcript of 8 May 2007, Issa Sesay, p. 90; Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, pp. 70-71.
[1511] Transcript of 11 April 2008, Morris Kallon, p. 128; Transcript of 30 May 2007, Issa Sesay, pp. 28-29.
[1512] Transcript of 30 May 2007, Issa Sesay, p. 46.

1.5.2. Masiaka: Operation Pay Yourself

782. Upon arrival in Masiaka in Port Loko District, the retreating troops regrouped into four discernible factions, each with its own command structure: the AFRC, the STF, and two RUF contingents, one of each of which was controlled by Superman and the other by Sesay.[1513]

783. As the Junta "government" no longer possessed the means to remunerate its fighters, the AFRC and RUF Commanders decreed that fighters were to "pay themselves" by looting civilian property.[1514] Operation Pay Yourself was announced by Johnny Paul Koroma over the BBC from Masiaka.[1515] Superman then endorsed the Operation at a meeting in Masiaka.[1516] The extent of the looting that followed precipitated a breakdown in the military command structure in Masiaka as the fighters clamoured to secure property for their personal benefit.[1517]

784. As many fighters among the AFRC and RUF rank-and-file had personal radios, word of the Operation spread rapidly.[1518] Bockarie reiterated Koroma's order for Operation Pay Yourself prior to fleeing Kenema Town and his troops began looting cars, bicycles, food and money from the civilian population.[1519] The Chamber finds that from this point onwards, looting was a systemic feature of AFRC and RUF operations.

785. Following a meeting of Commanders in Masiaka, it was decided on Bockarie's orders that Sesay would lead and command an attack on Bo District.[1520] Certain RUF Commanders such as Mike Lamin and Isaac Mongor refused to participate in the attack.[1521]

786. Sesay travelled with a contingent of fighters to Mile 91 in Tonkolili District, where they were joined by Kallon on 16 February 1998. The ranks of Sesay's fighters were further increased by RUF and AFRC fighters retreating from Bo Town after its recapture by Kamajor

[1513] Transcript of 14 February 2008, DIS-085, p. 32 (CS).
[1514] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, pp. 72-73.
[1515] Transcript of 6 July 2006, TF1-334, p. 100 (CS); Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, pp. 73-74.
[1516] Transcript of 19 January 2005, TF1-071, p. 27-28.
[1517] Transcript of 6 July 2006, TF1-334, p. 101 (CS).
[1518] Transcript of 6 July 2006, TF1-334, p. 100 (CS).
[1519] Transcript 21 November 2005, TF1-045, pp. 8, 9.
[1520] Transcript of 9 May 2007, Issa Sesay, p. 26 (CS); Transcript of 8 May 2007, Issa Sesay, p. 97; Transcript of 14 April 2008, Morris Kallon, pp. 6-7; Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 75.
[1521] Transcript of 9 May 2007, Issa Sesay, pp. 29-30 (CS).

forces.[1522] The joint AFRC/RUF attack on Bo was unsuccessful and Sesay was injured.[1523]

1.5.3. Makeni: The plan to attack Kono

787. The remaining troops which did not participate in Bo the attack travelled north from Masiaka through Lunsar to Makeni in Bombali District. Superman was the Commander leading the RUF convoy to Makeni.[1524] Other senior AFRC and RUF Commanders in Makeni included Johnny Paul Koroma, Mike Lamin, Isaac Mongor, Eldred Collins, Bazzy, Five-Five and Brigadier Mani.[1525]

788. The arrival of the AFRC/RUF forces in Makeni was marked by mass looting and chaos as the fighters aggressively conducted Operation Pay Yourself as ordered.[1526] Even with the presence of many Senior Commanders, no fighters were punished for their transgressions against civilians.[1527]

789. After less than a week in Makeni, several high ranking AFRC and RUF Commanders such as SAJ Musa, Superman, Bazzy and Hassan Papah Bangura proceeded to Kabala in Koinadugu District.[1528] Koroma travelled to his native village Magbonkineh.[1529]

790. In Kabala, Superman and SAJ Musa formulated a plan to attack Koidu in Kono District. Musa regarded Kono as a strategic asset for the AFRC/RUF and argued that its capture would secure international recognition.[1530] Superman communicated this plan to Bockarie. Bockarie and Koroma considered that the troops should retreat to Kailahun. It was therefore decided that the troops would attack Kono in order to secure a passage to Kailahun, as Bo and Kenema were under the control of ECOMOG and Kamajor forces. Bockarie

[1522] Transcript of 8 May 2007, Issa Sesay, p. 97; Transcript of 11 April 2008, Morris Kallon, pp. 129-130
[1523] Transcript of 8 May 2007, Issa Sesay, p. 100; Transcript of 19 October 2004, George Johnson, p. 20.
[1524] Transcript of 22 January 2008, DMK-161, pp. 17-18.
[1525] Transcript of 9 May 2007, Issa Sesay, pp. 13-16; Transcript of 20 July 2005, TF1-360, p. 9 (CS); Transcript of 17 January 2008, DIS-214, p. 99 (CS); Transcript of 14 February 2008, DIS-085, p. 33.
[1526] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, pp. 74. Transcript of 11 January 2008, DIS-163, pp. 26-27; Transcript of 15 January 2008, DIS-214, p. 60 (CS); Transcript of 17 January 2008, DIS-214, p. 97; Transcript of 22 April 2008, DMK-087, pp. 92-94; Transcript of 22 February 2008, DIS-009, pp. 70-71; Transcript of 19 January 2005, TF1-071, p. 27-28.
[1527] Transcript of 17 January 2008, DIS-214, p. 99 (CS).
[1528] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, pp. 81-83.
[1529] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 73.
[1530] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, pp. 81-83.

indicated that Koroma should be escorted to Kailahun for his own welfare.[1531]

791. Superman and Bazzy accordingly travelled to Magbonkineh and collected Koroma before returning to Makeni, where they met Sesay and Kallon, who had travelled to Makeni after the failed attack on Bo.[1532]

1.5.4. SAJ Musa breaks away from the AFRC/RUF

792. Although the evidence is inconclusive as to precisely when the rift developed between SAJ Musa and the other AFRC and RUF Commanders, the Chamber concludes that it occurred prior to the joint attack on Kono District.[1533] SAJ Musa considered the AFRC to be professional soldiers and would not stand the prospect of subordination to RUF command. In particular, he refused to accept orders from Bockarie and Sesay.[1534]

793. SAJ Musa accordingly decided to establish his own base in Koinadugu District with troops loyal to him. Although a number of AFRC troops followed him, the majority elected to remain allied with the RUF.[1535] From that point onwards no relationship existed between SAJ Musa and the RUF.[1536] We find that SAJ Musa and AFRC fighters loyal to him did not participate in the joint attack on Kono District and that time on they did not form part of the Junta forces.

1.6. The AFRC/RUF in Kono and Kailahun Districts (March to November 1998)

1.6.1. The AFRC/RUF Attack Kono

794. In the second half of February 1998, a group of AFRC and RUF fighters launched the attack on Kono District. The advancing fighters met stiff resistance from enemy forces. When some demoralised fighters retreated, Sesay shot and killed one of them and urged the troops to

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[1531] Transcript of 9 May 2007, Issa Sesay, pp. 13-15; Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 85.
[1532] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 85; Transcript of 9 May 2007, Issa Sesay, pp. 3-4, 7.
[1533] Transcript of 14 October 2004, George Johnson, p. 58; Transcript of 24 January 2005, TF1-071, p. 94-95.
[1534] Transcript of 5 December 2005, TF1-184, pp. 88-89; Transcript of 18 October 2004, George Johnson, p. 104.
[1535] Transcript of 24 January 2005, TF1-071, p. 94-95; Transcript of 28 July 2005, TF1-036, p. 43 (CS); Transcript of 14 October 2004, George Johnson, p. 58; Transcript of 24 January 2005, TF1-071, p. 92.*See also* Defence Request for Agreement of Facts, 8 March 2000, para. 50; Prosecution Response to Sesay Request for Agreement of Facts, 23 March 2007, para. 3.
[1536] Transcript of 14 April 2008, Morris Kallon, p. 129.

capture Koidu Town, the capital of Kono District.[1537]

795. Although Sesay as BGC was second-in-command to Bockarie, Superman commanded the AFRC/RUF troops in the attack on Koidu Town as Sesay had not yet recovered from the injuries he sustained in Bo District.[1538] Bazzy was second-in-command to Superman[1539] while AFRC Commander Staff Alhaji led an attack on nearby Penduma.[1540] The other senior RUF Commanders present included Kallon, Mike Lamin and RUF Rambo. The fighters were followed by a convoy that included Koroma and Sesay.[1541]

796. The attack on Kono was successful and the AFRC/RUF troops captured Koidu on or about 1 March 1998.[1542] The RUF and AFRC troops who had remained in Makeni then moved in a convoy of looted cars to Koidu.[1543]

797. Johnny Paul Koroma was the overall Commander in Kono. Sesay was immediately subordinate to him and was also the highest RUF Commander in Kono District as Bockarie remained in Buedu in Kailahun District.[1544] Superman was subordinate to Sesay.[1545] The AFRC troops took orders from their own Commanders, rather than the RUF.[1546]

798. From Kailahun, Bockarie ordered Sesay to ensure that Koroma was escorted to Buedu.[1547] Bockarie further ordered Sesay to arrange the RUF command structure in Kono.[1548] At a meeting in Kono, Sesay determined that he and Koroma would proceed to Kailahun,

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[1537] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 102.
[1538] Transcript of 7 November 2005, TF1-366, p. 105 (CS); Transcript of 17 January 2008, DIS-214, pp. 103 (CS); Transcript of 20 July 2005, TF1-360, p. 11 (CS); Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 108.
[1539] Transcript of 14 October 2004, George Johnson, p. 59. Akim Touray was also a senior AFRC Commander in the attack on Koidu: Transcript of 22 July 2004, TF1-217, p. 20.
[1540] Transcript of 22 July 2004, TF1-217, p. 32-33.
[1541] Transcript of 14 October 2004, George Johnson, p. 58. The Chamber notes that other witnesses testified that Koroma was taken from his village to Koidu after the attack: Transcript of 14 October 2004, George Johnson, p. 61; Transcript of 9 May 2007, Issa Sesay, pp. 36-38. The Chamber is satisfied that Koroma arrived in Koidu, and does not consider the exact date to be a material fact.
[1542] Transcript of 9 May 2007, Issa Sesay, pp. 36-37; Transcript of 14 October 2004, George Johnson, p. 60; Transcript of 22 April 2005, TF1-362, pp. 12-13 (CS). *See also*: Transcript 8 November 2005, TF1-366, pp. 5-7 (CS).
[1543] Transcript of 9 May 2007, Issa Sesay, p. 39.
[1544] Transcript of 20 July 2005, TF1-360, p. 14 (CS); Transcript of 3 June 2008, DAG-048, p. 101; Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 115.
[1545] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 115; Transcript of 20 July 2005, TF1-360, p. 18.
[1546] Transcript of 19 January 2005, TF1-071, p. 55; Transcript of 9 May 2007, Issa Sesay, p. 54 (CS).
[1547] Transcript of 20 July 2005, TF1-360, p 14 (CS); Exhibit 35, Salute Report from Sam Bockarie to Foday Sankoh, p. 5.
[1548] Transcript of 20 July 2005, TF1-360, pp. 14-15, 19 (CS).

while Superman was to remain as the overall RUF Commander in Kono District. Sesay ordered Kallon to remain as Superman's deputy.[1549]

799. At the meeting prior to his departure, Koroma declared Koidu a "no go area" for civilians, on the basis that the civilians had betrayed the movement by inviting the Kamajors to protect them. He therefore ordered that no civilian was to be permitted to remain in Koidu and that any civilian who was not willing to support the rebel movement was to be executed to prevent them from passing information to the Kamajors. Finally, Koroma ordered that Koidu was to be burned to the ground.[1550] Koroma's orders were supported and endorsed by Sesay.[1551]

800. In March 1998, Koroma and his family were escorted from Koidu to Buedu by Sesay, Mike Lamin and other RUF and AFRC fighters.[1552] Koroma's orders were implemented by the remaining troops in Kono District.[1553]

1.6.2. The RUF Arrest Johnny Paul Koroma in Buedu

801. Shortly after Koroma arrived in Buedu, Bockarie, Sesay, Mike Lamin and Rambo placed Koroma under arrest at gun point and confiscated the diamonds in his possession.[1554] Sesay drove Koroma's wife to a nearby location and raped her.[1555]

802. From the evidence the Chamber concludes that Bockarie planned to strip Koroma of power when he ordered that Koroma be escorted to Buedu, which was the seat of the RUF High Command.[1556] As the AFRC had staged the coup and invited the RUF to form part of its regime, the AFRC under Koroma had long dominated the working partnership between the two groups. We recall that Bockarie had become disgruntled with Koroma's leadership while the Junta remained in government in Freetown, particularly after Koroma's refusal to accept his proposal to integrate the RUF into the Junta military hierarchy and his advice pertaining to

[1549] Transcript of 21 November 2005, TF1-045, p. 54; Transcript of 20 July 2005, TF1-360, p. 15.
[1550] Exhibit 119, AFRC Transcript of 18 May 2005, TF1-334, pp. 3-9; Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 7-8.
[1551] Exhibit 119, AFRC Transcript of 18 May 2005, TF1-334, pp. 3, 7.
[1552] Exhibit 35, Salute Report of Bockarie, p. 4; Transcript of 20 July 2005, TF1-360, pp. 14-15, 19 (CS); Transcript of 21 November 2005, TF1-045, p. 52.
[1553] Exhibit 119, AFRC Transcript of 18 May 2005, TF1-334, p. 9. *See also infra* para. 1142.
[1554] Transcript of 25 April 2005, TF1-362, p. 43-44; Exhibit 277, Situation Report of Blackguard Commander to the Leader, date unknown, p. 9675.
[1555] Transcript of 21 November 2005, TF1-045, p. 56.

military attacks.[1557] After the Intervention, the two groups had to again fight a guerrilla war and it was Bockarie's view that the RUF was more skilled and better equipped to fight such a war.[1558]

803. Koroma informed Bockarie that AFRC Commander Gullit also possessed diamonds from his mining assignments in Kono District. Sesay was sent to arrest Gullit, who was trading cocoa in Kailahun Town.[1559] Gullit surrendered his weapon. He was then placed under arrest and his diamonds seized.[1560]

804. Bockarie then expelled Koroma to Kangama, where he was effectively placed under house arrest. Koroma had no means of communication with his troops until after the Lomé Accord in 1999.[1561] After his arrest, the RUF assaulted Gullit and detained him in Kailahun District.[1562] The AFRC troops in Kono District were not informed about Koroma's removal from power until Gullit was permitted to return to Kono in April 1998.[1563]

805. Bockarie then reorganised the AFRC/RUF command structure, communicating it to the troops in Kono via radio. Bockarie also announced by radio that Koroma had appointed him as the Chief of Defence Staff of the RUF and AFRC, in which capacity he was effectively the most senior Commander for all military operations.[1564]

806. In order to motivate his senior officers, Bockarie issued a series of promotions. Sesay was promoted to full Colonel and assigned as BFC, while Superman became BGC. Kallon was

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[1556] Exhibit 35, Salute Report of Bockarie, p. 5; Transcript of 26 July 2005, TF1-360, pp. 38-39 (CS). Transcript of 3 June 2008, DAG-048, p. 101.
[1557] *Supra* para. 24.
[1558] Transcript of 21 November 2005, TF1-045, p. 51.
[1559] Transcript of 20 July 2006, TF1-371, pp. 71-73 (CS); Transcript of 10 May 2007, Issa Sesay, pp. 38-42 (CS).
[1560] Transcript of 10 May 2007, Issa Sesay, p. 40-42 (CS).
[1561] Transcript of 10 May 2007, Issa Sesay, pp. 18-19; Exhibit 119, AFRC Transcript of 16 June 2005, TF1-334, p. 28; Transcript of 14 April 2008, Morris Kallon, pp. 26-28.
[1562] Transcript of 5 December 2005, TF1-184, p. 25; Exhibit 119, AFRC Transcript of 19 May 2005, TF1-334 p. 14 (CS); Transcript of 10 May 2007, Issa Sesay, p. 42.
[1563] Transcript of 20 July 2006, TF1-371, pp. 71-73 (CS); Transcript of 10 May 2007, Issa Sesay, pp. 46-47 (CS); Exhibit 119, AFRC Transcript of 16 June 2005, TF1-334, p. 28; Transcript of 14 April 2008, Morris Kallon, pp. 26-28. Gullit informed his subordinates that he had secured his release from Kailahun District by convincing Bockarie that he would be able to control the AFRC in Kono District: Exhibit 119, Transcript of 19 May 2005, TF1-334, p. 14. On the finding that this happened around April 1998, *supra* para. 817 to 820.
[1564] Transcript of 28 July 2005, TF1-036, pp. 40-44 (CS); Transcript of 20 July 2005, TF1-360, p. 18 (CS); Transcript of 21 January 2005, TF1-071, p. 8.

tasked with monitoring developments at the front lines and reporting to Sesay as BFC.[1565] At this time, Gbao remained OSC and Overall IDU Commander in Kailahun District.[1566]

1.6.3. AFRC/RUF Command Structure in Kono District

807. The AFRC/RUF established an integrated command structure in Kono District. Superman, in addition to his role as BGC, was the overall Commander for Kono District.[1567] In Gullit's absence from Koidu, Bazzy was appointed as the overall AFRC Commander and Superman's deputy.[1568] Five-Five was the G5 Commander of civilians and abductees.[1569]

808. Superman and Bazzy carried out the deployment of troops in Kono District.[1570] Hassan Papa Bangura (aka Bomb Blast) was the Operations Commander, deputised by RUF Rambo.[1571] All AFRC Battalion Commanders were subordinate to Bangura, who reported to Superman.[1572]

809. The AFRC/RUF troops in Kono District were organised into an integrated hierarchical command structure, in order of seniority from Brigade Commanders to Battalion Commanders and Company Commanders. A Brigade consisted of four Battalions; a Battalion consisted of four Companies; a Company consisted of four Squads; and a Squad consisted of two Teams. As a guerrilla army, the number of troops in each of these units was flexible and varied.[1573]

810. Superman passed orders to the troops at muster parades. His orders were passed down to each battalion, then each company, each platoon, each squad, and each team. Reports from the field worked their way up the chain of command in the reverse order.[1574] As Chairman,

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[1565] Transcript of 24 January 2005, TF1-071, pp. 129-130; Transcript of 21 January 2005, TF1-071, p. 4 (April); Transcript of 20 July 2005, TF1-360, p. 18-19 (March); Transcript of 10 May 2007, Issa Sesay, p. 16; Exhibit 35, Salute Report of Bockarie, p. 5; Transcript of 12 April 2005, TF1-141, p. 80.
[1566] Transcript of 21 January 2005, TF1-071, p. 8; Transcript of 10 May 2007, Issa Sesay, pp. 4, 16.
[1567] Transcript of 21 January 2005, TF1-071, p. 4; Transcript of 23 November 2005, TF1-045, pp. 4-6; Transcript of 22 January 2008, DMK-161, p. 18.
[1568] Transcript of 14 April 2008, Morris Kallon, p. 14.
[1569] Exhibit 9, Kono Command Structure March to May 1998.
[1570] Transcript of 18 April 2008, Morris Kallon, p. 65.
[1571] Exhibit 119, AFRC Transcript of 19 May 2005, TF1-334, p. 4; Transcript of 14 April 2008, Morris Kallon, pp. 26-28.
[1572] Exhibit 119, AFRC Transcript of 19 May 2005, TF1-334, pp. 16-21.
[1573] Transcript of 20 July 2005, TF1-360, pp. 19-22; Exhibit 9, Kono Command Structure.
[1574] Transcript of 18 April 2008, Morris Kallon, pp. 13-14.

Bockarie could give orders to anyone he wished.[1575]

811. AFRC and RUF contingents were stationed throughout the District. Komba Gbundema was deployed at Yomandu,[1576] RUF Rambo at Gandorhun[1577] and Rocky at Wendedu.[1578] These RUF Commanders all reported to Superman. AFRC battalions were located further north of Koidu: Captain Junior were in Jagbwema Fiama;[1579] Savage and his deputy Staff Alhaji were in Tombodu;[1580] Lt. Kallay was at Bumpe; Lt. Mosquito at Sewafe and Tito at Yengema.[1581]

812. All information from RUF Headquarters to Superman arrived via radio.[1582] Although certain other Commanders including Kallon possessed radio sets,[1583] Bockarie only communicated with Superman's radio station. The Brigade Commanders would transmit between stations in Kono, but messages to Bockarie were transmitted to Superman in Koidu, from where they would be forwarded to Buedu.[1584] The RUF Overall Signal Commander was stationed in Koidu and he reported to Superman.[1585]

1.6.4. The AFRC/RUF After ECOMOG Recapture Koidu

813. The AFRC/RUF's control over Koidu Town was short-lived. In early April 1998, the RUF and AFRC were forced to retreat from Koidu under heavy attack from ECOMOG forces.[1586] On Bockarie's orders, Superman instructed the retreating fighters to burn Koidu Town to the ground.[1587]

[1575] Transcript of 25 July 2005, TF1-360, p. 13.
[1576] Exhibit 119, AFRC Transcript of 19 May 2005, TF1-334, pp. 32-34.
[1577] Exhibit 119, AFRC Transcript of 19 May 2005, TF1-334, pp. 32-34.
[1578] Transcript of 21 January 2005, TF1-071, p. 16; Transcript of 14 January 2008, DIS-163, p. 68; Transcript of 14 April 2008, Morris Kallon, p. 18.
[1579] Exhibit 119, AFRC Transcript of 19 May 2005, TF1-334, pp. 16-21.
[1580] Exhibit 119, AFRC Transcript of 19 May 2005, TF1-334, pp. 16-21.
[1581] Transcript of 21 April 2008, Morris Kallon, p. 25; Transcript of 22 April 2008, DMK-087, p. 100. AFRC troops were also stationed at Five-Five Spot: Transcript of 7 July 2006, TF1-334, p. 77 (CS).
[1582] Transcript of 16 May 2007, Issa Sesay, p. 18.
[1583] Isaac and Rambo had radio sets in Gandorhun: Transcript of 16 May 2007, Issa Sesay, p. 18. Other Battalions opened radio stations at Wendedu (aka Banya Ground), Yellow Mosque, Woama, Gandorhun, and Sengema: Transcript of 15 January 2008, DIS-214, p. 98 (CS).
[1584] Transcript of 15 January 2008, DIS-214, pp. 98-99 (CS).
[1585] Transcript of 11 July 2005, TF1-361, pp. 79-82 (CS).
[1586] Transcript of 17 July 2006, TF1-041, p. 36 (CS); Transcript of 19 January 2005, TF1-071, p. 51.
[1587] Transcript of 11 January 2008, DIS-163, pp. 63-64; Transcript of 16 May 2007, Issa Sesay, p. 14 (CS); Transcript of 29 October 2007, DIS-188, p. 18 (CS); Transcript of 5 May 2008, DMK-116, p. 92; Transcript of 12 July 2005, TF1-361, pp. 3-8 (CS).

814. Although Koidu Town was ceded to ECOMOG, the AFRC/RUF troops managed to maintain control over much of Kono District. The AFRC and RUF assembled after the attack in a town near Koidu called Meiyor which Superman renamed Superman's Ground.[1588] Superman and Isaac Mongor were based at Dabundeh Road[1589] and Kallon stayed at Hill Station in an area known as Guinea Highway.[1590]

815. Superman established the main radio station at Superman Ground. The AFRC/RUF also possessed a portable radio set which was used on operations. Kallon had a radio set, as did Gbundema at Yomadu.[1591]

816. At about this time, the relationship between Superman and Kallon further deteriorated. On one occasion, Kallon attempted to send a radio message to Bockarie criticising Superman for failing to uphold the RUF ideology; however instead of sending the message, the radio operators reported it to Superman, creating significant discord.[1592] When ECOMOG captured Sewafe, Bockarie instructed Superman to burn the houses and vehicles of any troops who refused to fight. Superman attempted to burn Kallon's vehicle. After Kallon prevented him from doing so, Superman complained to Bockarie that Kallon refused to follow his orders.[1593]

1.6.5. The AFRC and RUF Split

817. In April 1998, shortly after the Junta forces were pushed out of Koidu Town, Gullit returned to Kono District and assumed command of the AFRC from Bazzy.[1594] The relationship between the AFRC and RUF in Kono District was fractious. Kallon had executed two AFRC fighters and attempted to prevent the AFRC from holding muster parades, asserting that the AFRC had no right to assemble as the RUF was the only true fighting force in

[1588] Transcript of 19 January 2005, TF1-071, p. 51.
[1589] Transcript of 17 July 2006, TF1-041, p. 36 (CS).
[1590] Transcript of 17 July 2006, TF1-041, p. 37 (CS).
[1591] Transcript of 12 July 2005, TF1-361 pp. 12-16 (CS); *see also* Transcript of 15 January 2008, DIS-214, pp. 96-97 (CS)
[1592] Transcript of 14 April 2008, Morris Kallon, pp. 61-62.
[1593] Transcript of 30 May 2007, Issa Sesay, pp. 32-33, 35-36.
[1594] Exhibit 119, AFRC Transcript of 16 June 2005, TF1-334, p. 28; Transcript of 14 April 2008, Morris Kallon, pp. 26-28. Gullit informed his subordinates that he had secured his release from Kailahun District by convincing Bockarie that he would be able to control the AFRC in Kono District: Exhibit 119, Transcript of 19 May 2005, TF1-334, p. 14.

Kono.[1595] These tensions coincided with sustained military pressure from ECOMOG on the RUF and AFRC positions.[1596]

818. Following Gullit's return, Superman and Isaac Mongor conducted a mission to destroy Sewafe Bridge. AFRC troops including Gullit, Bazzy, Idrissa Kamara, and Hassan Bangura participated in this mission.[1597]

819. The rift between the two forces erupted after the Sewafe Bridge attack when Gullit disclosed to his troops that Bockarie had beaten him and seized his diamonds and that Johnny Paul Koroma was under RUF arrest.[1598] Gullit declared that the AFRC troops would withdraw from Kono District to join SAJ Musa in Koinadugu District.[1599] Gullit and Bazzy accordingly departed, taking with them the vast bulk of the AFRC fighters in Kono District. The split was acrimonious and Gullit decisively refused to accept Superman's attempt to re-impose cooperation, ignoring a directive from him to return to Kono District.[1600]

820. The Chamber has been unable to ascertain with certainty the date on which the split between the AFRC and RUF forces occurred. From the evidence adduced pertaining to the subsequent movement of the AFRC troops under Gullit's command across Koinadugu and Bombali Districts, the Chamber concludes that they departed Kono District prior to the end of April 1998.[1601]

1.6.6. RUF Headquarters in Buedu

821. From February to May 1998, while the AFRC/RUF forces were stationed in Kono District, Bockarie remained at the RUF Headquarters in Buedu. Until August 1998, there were only two Area Commanders in the RUF, one for Kono and one for Kailahun.[1602] Everyone in

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[1595] Exhibit 119, AFRC Transcript of 19 May 2005, TF10334, pp. 8-10).
[1596] Exhibit 119, Transcript of 19 May 2005, TF1-334, pp. 10, 14; Transcript of 14 October 2004, pp. 75-76.
[1597] Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 27, 86.
[1598] Exhibit 119, Transcript of 19 May 2005, TF1-334, p. 14.
[1599] Exhibit 119, Transcript of 19 May 2005, TF1-334, pp. 14-15; Exhibit 119, Transcript of 17 June 2005, TF1-334, pp. 44-45; Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, p. 86. *See also:* Transcript of 15 April 2008, Morris Kallon, p. 10.
[1600] Transcript of 25 July 2005, TF1-360, p. 4 (CS); Exhibit 119, AFRC Transcript of 23 May 2005, TF1-334, pp. 41-42.
[1601] *Infra* paras 845 to 850.
[1602] Transcript of 31 May 2007, Issa Sesay, p. 35.

the RUF command structure ultimately reported to Bockarie.[1603] Bockarie also received reports from the Unit Commanders.[1604]

822. Bockarie controlled the arms and ammunition in Kailahun District and distributed these to Commanders only upon request.[1605]

1.6.7. Superman Joins SAJ Musa in Koinadugu District

823. In August 1998, the RUF attempted to retake control of Koidu from ECOMOG in an attack led by Superman and code named the Fiti-Fata mission. Although Kallon was Superman's deputy for that mission, the operation was hampered by enmity between the two Commanders and excessive looting by the troops, and the mission failed.[1606] Superman alleged that Kallon had sabotaged the mission[1607] and Bockarie then recalled Kallon to Buedu.[1608]

824. The animosity between Superman and Bockarie was heightened by the failed Fiti-Fata mission. Shortly thereafter Superman decided to join forces with SAJ Musa in Koinadugu District[1609] and he departed Kono District with a contingent of loyal RUF fighters and a store of captured ammunition.[1610] Bockarie ordered Superman to report to Headquarters in Buedu but Superman refused to do so.[1611]

825. In August 1998, Bockarie modified the radio codes utilised by the RUF to prevent

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[1603] The Chamber notes that some AFRC fighters remained in Kailahun District after the Intervention, however these fighters subordinated themselves to the RUF: Transcript of 21 January 2008, DIS-174, pp. 96-97 (CS).
[1604] Transcript of 10 May 2007, Issa Sesay, p. 71.
[1605] Transcript of 24 January 2008, DIS-157, pp. 88-89 (CS).
[1606] Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, p. 2351; Exhibit 35, Salute Report from Sam Bockarie to Foday Sankoh, p. 2363.
[1607] Transcript of 30 May 2007, Issa Sesay, p. 33; Transcript of 15 January 2008, DIS-214, p. 113 (CS); Transcript of 24 April 2004, DMK-087, pp. 40-41, 44; Transcript of 28 July 2005, TF1-361, p. 115 (CS); Transcript of 14 April 2008, Morris Kallon, p. 35. *See also* Exhibit 277, Situation Report of Blackguard Commander to the Leader, date unknown, p. 9676-9677.
[1608] Transcript of 30 May 2007, Issa Sesay, p. 33; Transcript of 14 April 2008, Morris Kallon, pp. 35, 62; Transcript of 18 April 2008, Morris Kallon, p. 12; Transcript of 17 July 2006, TF1-041, pp. 32-33 (CS).
[1609] Transcript of 28 July 2005, TF1-036, p. 63 (CS).
[1610] Transcript of 17 July 2006, TF1-041, p. 33 (CS); Exhibit 35, Salute Report of Bockarie, p. 5; Transcript of 14 April 2008, Morris Kallon, p. 5.
[1611] Exhibit 35, Salute Report of Bockarie, p. 6; Transcript of 11 January 2008, DIS-163, pp. 94-95. The Chamber notes that several witnesses testified that Superman went to Koinadugu District on Bockarie's orders to capture SAJ Musa and convey him to Kailahun: The Chamber find this evidence unreliable in light of the discord that existed between the two Commanders and Superman's subsequent refusal to cooperate with the RUF High Command.

Superman from monitoring radio transmissions[1612] and forbade all RUF radio operators from contacting Superman, on threat of death.[1613]

1.6.8. Role of the Accused

1.6.8.1. Sesay

826. Between March and May 1998, Sesay as a Colonel had the important assignment of BFC. He was based in Buedu. Bockarie was the only Commander in Buedu with a radio set at his house.[1614] Sesay lived across the street from Bockarie and the two men worked closely together, sharing the radio set.[1615] Sesay and Bockarie maintained constant contact with the front lines and transmitted orders and received messages via the radio.[1616] Sesay took command in Buedu in Bockarie's absence.[1617]

827. Signallers in Kono would not send messages to Bockarie directly; rather messages were sent to Sesay as BFC, who would pass them to Sam Bockarie.[1618] In addition, Sesay's bodyguards in Kono would report to him via radio or written messages.[1619]

828. In May 1998, Bockarie promoted Sesay to Colonel and appointed him BFC. At about this time, Bockarie sent Sesay to Taylor in Monrovia with a package of diamonds to purchase ammunition for the RUF.[1620] However, upon Sesay's return to Buedu, he reported that he had mislaid the package and lost all the diamonds.[1621] Bockarie stripped him of his assignment as

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[1612] Transcript of 16 May 2007, Issa Sesay, p. 24; Transcript of 11 January 2008, DIS-163, pp. 94-95.
[1613] Transcript of 18 July 2005, TF1-361, p. 39; Exhibit 199, Transcript of 12 July 2005, TF1-361, pp. 56-57 (CS).
[1614] Transcript of 24 January 2008, DIS-157, pp. 90-91 (CS).
[1615] Transcript of 8 November 2005, TF1-366, p. 59 (CS); Transcript of 28 January 2008, DIS-157, p. 28; Transcript of 10 May 2007, Issa Sesay, pp. 16.
[1616] Transcript of 11 July 2005, TF1-361, pp. 88-90, 97-102; Transcript of 12 July 2005, TF1-361, pp. 2-7, 21-26, 40-42; Transcript of 15 July 2005, TF1-361, pp. 33-36; Transcript of 28 July 2006, TF1-371, p. 107; *see also* Transcript of 10 May 2007, Issa Sesay, p. 72.
[1617] Transcript of 12 April 2005, TF1-141, p. 80.
[1618] Transcript of 12 July 2005, TF1-361, p. 23 (CS).
[1619] Transcript of 10 July 2006, TF1-041, p. 29 (CS). The Chamber notes that it was common practice for the bodyguards of senior Commanders to double as intelligence officers and be responsible for passing information to their Commander on operations at the front lines: *see* Transcript of 1 August 2006, TF1-371, pp. 37-40; Transcript of 20 July 2006, TF1-371, p. 75; Transcript of 21 June 2006, TF1-367, pp. 56-57; Transcript of 10 July 2006, TF1-041, p. 28.
[1620] Sesay testified that the diamonds included one 15 carat diamond and a number of smaller diamonds of one carat or less: Transcript of 10 May 2007, Issa Sesay, pp. 42-44 (CS). *See also* Exhibit 277, Situation Report of Blackguard Commander to the Leader, date unknown, p. 9676.
[1621] Exhibit 36, Salute Report of Issa Sesay, p. 2351.

BFC and sent him to Pendembu to coordinate the front line operations there.[1622] Bockarie did not, however, reduce Sesay in rank.

829. In light of the evidence that Bockarie frequently killed RUF members for lesser transgressions,[1623] the Chamber considers Bockarie's actions certainly to constitute a mild reprimand indicative of Sesay's seniority and close relationship between the two of them.[1624] Furthermore, we observe that Sesay was sent to Pendembu because Bockarie regarded him as an able military Commander.[1625] Holding the front line at Pendembu was vital to the survival of the RUF, as the town was the gateway to the RUF strongholds of Kailahun Town and Buedu.[1626]

830. Although Sesay's official assignment was BFI, he also acted as the *de facto* overall Commander at Pendembu until his departure sometime during the third week of November 1998.[1627] Moreover, Sesay was superior to all operational Commanders in Kailahun District. Denis Lansana was the Brigade Commander of Kailahun, in charge of four Battalions of fighters. He was based in Pendembu and he took orders from Sesay, who was "the most senior man" in the Brigade.[1628]

831. Sesay had access to the sole radio set in Pendembu, which he used regularly to communicate with Bockarie and the Battalions at the front line throughout Kailahun District. Sesay visited the front lines and received reports from target Commanders there.[1629]

832. The RUF security units reported to Sesay. From May through November 1998, Sesay saw the IDU Commander in Pendembu on a daily basis at muster parades. The IDU Commander received reports from IDU agents at the frontlines and reported to Sesay about the three target areas under his command. Sesay would resolve the issues raised or pass the

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[1622] Transcript of 22 June 2007, Issa Sesay, pp. 39, 57; Transcript of 24 November 2005, TF1-045, p. 61; Exhibit 35, Salute Report of Bockarie, p. 6; Exhibit 36, Salute Report of Issa Sesay, p. 7.
[1623] *See*, for example, Transcript of 21 January 2008, DIS-174, pp. 107-109 (CS); Transcript of 3 June 2008, DAG-048,
pp. 66-67.
[1624] *See* TF1-367, Transcript 23 June 2006, pp. 32.
[1625] Exhibit 35, Salute Report from Bocakarie to Sankoh, p. 2364.
[1626] Transcript of 28 January 2008, DIS-157, p. 33.
[1627] Transcript of 10 May 2007, Issa Sesay, p. 57; Transcript of 22 October 2007, DIS-069, p. 101.
[1628] Transcript of 21 January 2008, DIS-174, p. 99 (CS); Transcript of 24 January 2008, DIS-157, p. 96 (CS).
[1629] Transcript of 21 January 2008, DIS-174, pp. 97-99 (CS); Transcript of 10 May 2007, Issa Sesay, p. 72.

reports to Bockarie if necessary.[1630] Similarly, the MP Commander in Pendembu during this period reported to Sesay.[1631] Disciplinary matters which could not be settled in Pendembu would be sent to Buedu for the Overall MP Commander to deal with.[1632]

1.6.8.2. Kallon

833. In February 1998, Kallon had the rank of Major during the retreat to Kono.[1633] As noted above, Kallon remained in Kono District after the February/March 1998 attack on Koidu and reported to Superman.[1634]

834. Kallon was one of several senior RUF Commanders including Col. Isaac Mongor, Komba Gbundema and Major Kailondo, who were not directly within the control hierarchy of Superman and did not have discrete combat units or forces assigned to their command.[1635]

835. Nonetheless, the Chamber finds that Kallon was an operational Commander who gave orders which were complied with by troops. He was assigned to an area known as Guinea Highway.[1636] Kallon was entrusted with the particular responsibility of defending the Makeni-Kono highway against advancing ECOMOG and Kamajor troops.[1637] In this capacity, he would instruct Commanders to undertake ambush laying missions on the basis of orders from Superman.

836. In March 1998, Kallon also gave orders to fighters at daily muster parades in the Guinea Highway area about the daily missions to be undertaken and appointed Commanders to lead various patrols pursuant to his instructions.[1638] When the troops were retreating from Kono during the April 1998 ECOMOG attack, Kallon supervised the burning of homes on the orders of Superman.[1639]

[1630] Transcript of 10 May 2007, Issa Sesay, pp. 68-69; Transcript of 15 May 2007, Issa Sesay, pp. 28-29.
[1631] Transcript of 10 May 2007, Issa Sesay, pp. 77-78; Transcript of 26 October 2007, DIS-188, p. 128 (CS). In August 1998, Jalloh was reassigned to Guinea Highway in Kono as Deputy Overall MP Commander by Bockarie: Transcript of 25 October 2007, DIS-188, p. 68 (CS); Transcript of 3 June 2008, DAG-048, p. 107.
[1632] Transcript of 10 May 2007, Issa Sesay, p. 78.
[1633] Transcript of 22 January 2008, DMK-161, p. 18; Transcript of 11 April 2008, Morris Kallon, pp. 33-34.
[1634] Transcript of 20 July 2005, TF1-360, pp. 18-19.
[1635] Exhibit 9, Kono Command Structure Chart.
[1636] Transcript of 20 October 2004, George Johnson, p. 6; Transcript of Transcript 11 April 2005, TF1-141, p. 94.
[1637] Transcript of 20 October 2004, George Johnson, p. 6.
[1638] Transcript of 11 April 2005, TF1-141, pp. 91-95.
[1639] TF1-361, Transcript 18 July 2005, pp. 101-106.

837. Kallon was one of the few RUF Commanders who possessed radio sets in Koidu in 1998.[1640] In Koidu, the overall Signal Commander reported to Superman and Kallon.[1641]

838. Importantly, the Chamber recalls that Kallon was a Vanguard and this status afforded power and engendered respect. He was referred to as Bilai Karim, which referred to his ability to punish people for committing crimes.[1642] Kallon enjoyed privileges only afforded to senior RUF Commanders, such as personal bodyguards.[1643]

839. Following the failed Fiti-Fata mission, Kallon was recalled to Buedu and subsequently posted to Pendembu, where he remained with Sesay until December 1998.[1644]

1.6.8.3. Gbao

840. In 1998, Gbao remained the RUF Overall IDU Commander and OSC. [1645] Gbao was based in Kailahun District until February 1999.[1646]

841. As OSC, Gbao authorised minor punishments. He was required to send a report to the High Command to obtain authorisation to impose severe punishments.[1647] The unit Commanders sent copies of their reports to Gbao.[1648]

842. As Overall IDU Commander, Gbao investigated disputes between civilians and the RUF, and would punish people who committed crimes.[1649] As Overall IDU Commander, Gbao would receive reports from local agents on a weekly or monthly basis; he was the one

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[1640] The other Commanders were Superman, Rambo, the Black Guard Commander and TF1-366: Transcript of 15 November 2005, TF1-366, pp. 60-61; Transcript of 17 July 2006, TF1-041, pp. 6-7 (CS); Transcript of 12 July 2005, TF1-361 pp. 15-16 (CS).
[1641] Transcript of 11 July 2005, TF1-361, p. 82 (CS).
[1642] Transcript of 11 April 2008, Morris Kallon, p. 21.
[1643] Transcript of 11 April 2005, TF1-141, p. 92.
[1644] Transcript of 22 January 2008, DIS-174, p. 6 (CS); Transcript of 16 May 2007, Issa Sesay, p. 14. Certain witnesses testified that following Superman's departure from Kono District, Kallon remained as the overall RUF Commander there, assisted by RUF Rambo as the Brigade Commander: *see* Transcript of 17 July 2006, TF1-041, pp. 33-34, 50 (CS); Transcript of 21 July 2005, TF1-360, p. 6. However, the Chamber notes that Kallon was in Kailahun prior to the attack on Kono District in December 1998 and so does not accept that he remained in a command position in Kono between August and November 1998.
[1645] Transcript of 14 March 2006, TF1-330, p. 40 (CS); Transcript of 5 June 2008, DAG-048, pp. 8-9.
[1646] Transcript of 3 June 2008, DAG-048, pp. 42-43; Transcript of 31 May 2007, Issa Sesay, p. 44.
[1647] Transcript of 17 June 2008, DAG-047, p. 4; Transcript of 5 June 2008, DAG-048, pp. 8-9.
[1648] Transcript of 5 June 2008, DAG-048, p. 9; Transcript of 3 June 2008, DAG-048, p. 133. *See also* Exhibit 377, Report from IDU Commander, Makeni, to the Overall Security Commander.
1649 Transcript of 16 June 2008, DAG-047, p. 80.

who determined how frequently the agents had to send reports.[1650]

843. In addition, Gbao was the Chairman of the Joint Security Board.[1651] In this role he met with the Overall Unit Commanders for the MP, IO, and G5 units.[1652] Gbao as OSC was never was a member of the MP, G5 and IO units.[1653]

844. Gbao did not visit the front lines and was not involved in military planning.[1654] Neither the security units nor Augustine Gbao had their own radios, but as Gbao was based at RUF Headquarters he had access to the radio there.[1655]

1.7. The AFRC/RUF in Bombali and Koinadugu Districts (May to November 1998)

1.7.1. Gullit's AFRC Force Moves to Rosos

845. After Gullit and his troops departed Kono District in late April 1998, they travelled to Kurubola in Koinadugu District, where Gullit detailed to SAJ Musa his mistreatment at the hands of the RUF in Kailahun.[1656] SAJ Musa advised him to establish an AFRC defensive base in Bombali District.[1657] Gullit accordingly led his group of AFRC fighters from Mansofinia across Bombali District to Rosos.[1658] A small number of RUF fighters also formed part of the group and were subordinate to Gullit's command.[1659]

846. After their departure from Kono, the AFRC troops no longer received arms and ammunition from Kailahun. Instead, they were forced to be self-reliant and depended upon supplies captured from their enemies.[1660]

847. The AFRC troops under Gullit's command committed numerous atrocities against civilians in their destructive march across Bombali District. Villages near Bumbuna and the

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[1650] Transcript of 3 June 2008, DAG-048, pp. 40-41.
[1651] Transcript of 3 June 2008, DAG-048, p. 44; Transcript of 17 July 2006, TF1-041, p. 65 (CS).
1652 Transcript of 3 June 2008, DAG-048, p. 141.
[1653] Transcript of 9 June 2008, DAG-101, p. 117.
[1654] Transcript of 3 June 2008, DAG-048, pp. 42-43; Transcript of 19 July 2005, Witness TF1-361, p. 32-33.
[1655] Transcript of 3 June 2008, DAG-048, p. 38.
[1656] Transcript of 5 December 2005, TF1-184, p. 25.
[1657] Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, p. 86. *See also:* Transcript of 15 April 2008, Morris Kallon, p. 10.
[1658] Transcript of 19 October 2004, George Johnson, p. 43.
[1659] Transcript of 19 October 2004, George Johnson, pp. 48-49. *See also* Transcript of 21 July 2005, TF1-360, pp. 7-9.
[1660] Transcript of 7 July 2006, TF1-334, pp. 44-45 (CS).

border of Bombali and Koinadugu Districts were razed by fire;[1661] civilians at multiple villages including Kamagbengbe and Foroh Loko were killed; the town of Karina was attacked and civilians were massacred, abducted and subjected to amputations. Homes were also looted and burned. Amputations were carried out near Gbendembu and crimes of equal savagery were committed in other locations.[1662] Upon arrival at Rosos, Gullit declared that no civilians were to be permitted within 15 miles of the camp and that any civilian captured nearby was to be executed.[1663]

848. During the march, Gullit's radio operator was captured and the microphone for their radio was lost as a result of which the AFRC was unable to transmit or monitor radio signals.[1664] Gullit's group was therefore not in direct communication with SAJ Musa or the RUF High Command until they reached Rosos sometime in July or August 1998. At about this time, Gullit also communicated with Sesay and Kallon on the radio.[1665]

849. In one radio communication between Gullit and Sesay, Gullit told Sesay to have confidence in him and insisted that they needed to co-operate.[1666] In a subsequent radio communication with Bockarie, Gullit explained the logistical reasons for his lack of contact. Bockarie indicated that "he was very happy [...] that the two sides, both the RUF and the SLA, were brothers."[1667]

850. After two months, Gullit's group was forced to abandon Rosos due to heavy aerial bombardment by ECOMOG. They proceeded to a location nearby known as Major Eddie Town.[1668] From Major Eddie Town, Gullit communicated with AFRC and RUF Commanders including Superman, SAJ Musa, and Bockarie.[1669]

[1661] Exhibit 119, AFRC Transcript of 23 May 2005, TF1-334, pp. 42, 52.
[1662] Exhibit 119, AFRC Transcript of 23 May 2005, TF1-334, pp. 55, 58-59, 82, 85.
[1663] Exhibit 119, AFRC Transcript of 23 May 2005, TF1-334, p. 104.
[1664] Transcript of 7 July 2006, TF1-334, pp. 38, 51 (CS).
[1665] Transcript of 19 October 2004, George Johnson, pp. 43, 48; Transcript of 7 July 2006, TF1-334, p. 51 (CS); Exhibit 119, AFRC Transcript of 13 June 2005, TF1-334, p. 33.
[1666] Exhibit 119, Transcript from AFRC Trial, Transcript 24 May 2005, TF1-334, pp. 31-36.
[1667] Exhibit 119, Transcript from AFRC Trial, Transcript 24 May 2005, TF1-334, pp. 55-56. These communications appear to have taken place while the AFRC troops were at Rosos: Transcript of 24 May 2005, TF1-334, pp. 50-51.
[1668] Transcript of 14 October 2004, George Johnson, p. 101. The Chamber notes that this location was also known as Colonel Eddie Town: Transcript of 7 July 2006, TF1-334, p. 2 (CS).
[1669] Transcript of 21 July 2005, TF1-360, p. 19 (CS).

1.7.2. The AFRC, RUF and STF under SAJ Musa in Koinadugu District

851. Following the departure of Gullit and his AFRC fighters from Kurunbonla and the arrival of Superman, three distinct factions of fighters operated in Koinadugu District: the AFRC under the command of SAJ Musa, the STF commanded by Bropleh, and the RUF commanded by Superman.[1670] SAJ Musa refused to take orders from Bockarie or Superman; while Bropleh and Superman largely subordinated their fighters to SAJ Musa's command.[1671]

852. The AFRC, RUF and STF fighters in Koinadugu established a joint training base and coordinated operations such as the attack on Kabala staged by SAJ Musa and Superman.[1672]

853. In late August 1998, Bockarie ordered that a group of four radio operators (three RUF and one AFRC) be dispatched from Kono to join Gullit's fighting force as informants, to ensure that the RUF High Command was apprised of Gullit's movements and intentions. The radio operators travelled first to Superman and SAJ Musa in Koinadugu. They departed for Rosos on or about 1 September 1998 in the company of a large contingent of fighters sent by SAJ Musa to reinforce Gullit's group. While most were AFRC, there was one platoon of 64 RUF fighters and some STF.[1673]

854. Superman remained officially the highest ranking RUF officer in Koinadugu District. There is evidence that Superman communicated with the RUF High Command in this period: for instance, he informed Bockarie and Sesay of the attack on Kabala via the radio.[1674] Notwithstanding this sporadic communication, the Chamber is satisfied that from August 1998, Superman and those fighters under his command operated as an independent RUF faction. The Chamber finds that these individuals were no longer under the effective control of

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[1670] Transcript of 5 December 2005, TF1-184, p. 15; Transcript of 21 July 2005, TF1-360, p. 9-10 (CS); Transcript of 18 July 2005, TF1-361 p. 44 (CS).

[1671] Transcript of 25 July 2005, TF1-360, p. 3 (CS); Transcript of 5 December 2005, TF1-184, pp. 22-23; Transcript of 18 July 2005, TF1-361 p. 44 (CS); Transcript of 19 January 2005, TF1-071, p. 54; Transcript of 18 May 2007, Issa Sesay, p. 23.

[1672] Transcript of 7 April 2005, TF1-263, pp. 6, 12; Transcript of 12 July 2005, TF1-361 pp. 51-52 (CS). *See also* evidence that SAJ Musa and Superman operated a joint military training camp: Transcript of 18 July 2005, TF1-071, p. 42.

[1673] The group, which was led by Commander O-Five, comprised between two and three hundred fighters, including those who joined the group en route: Transcript of 21 July 2005, TF1-360, pp. 7-20 (CS); Exhibit 119, AFRC Transcript of 25 May 2005, TF1-334, pp. 4-7; Transcript of 18 July 2005, TF1-361, pp. 43-51.

[1674] Transcript of 12 July 2005, TF1-361 p. 53 (CS). *See also* Exhibit 277, Situation Report of Blackguard Commander to the Leader, date unknown, p. 9677 for evidence of hostile communication between Bockarie and Superman.

or working in concert with the RUF High Command in Buedu.[1675]

1.7.3. SAJ Musa joins the AFRC at Major Eddie Town

855. In October 1998, SAJ Musa shot an RUF fighter who had killed a civilian. The resulting friction between SAJ Musa and Superman culminated in his RUF faction joining with the STF to seize the AFRC's ammunition. SAJ Musa and his troops fled across the north of the country to join Gullit and his force in Bombali District.[1676] The STF fighters, led by Brigadier Mani and Bropleh, decided to remain with Superman.[1677]

856. When SAJ Musa arrived at Major Eddie Town, he assumed the control over the AFRC forces from Gullit, declaring himself the Commander-in-Chief.[1678] There were approximately 30 low-ranking RUF fighters, including the signaller Alfred Brown, amid several thousand AFRC fighters at Major Eddie Town.[1679] SAJ Musa initially intended to arrest and execute the RUF fighters, but he was dissuaded by other AFRC Commanders.[1680] However, he declared that no person was to communicate with Superman in Koinadugu or Bockarie in Buedu. SAJ Musa prohibited RUF radio operators from using the communication sets and ordered that any RUF radio operator who approached a radio was to be killed.[1681]

1.7.4. SAJ Musa Plans for an AFRC Attack on Freetown

857. SAJ Musa determined that the AFRC should launch an attack on Freetown to reinstate the AFRC as the army of Sierra Leone.[1682] Apparently unaware of the prohibition on contact with the RUF, Commander O-Five communicated this plan to Superman over the radio and was reported to SAJ Musa.[1683] SAJ Musa and Gullit also quarrelled when the former discovered

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[1675] Transcript of 22 May 2007, Issa Sesay, p. 26; Transcript of 11 January 2008, DIS-163, pp. 94-95.
[1676] Transcript of 5 December 2005, TF1-184, p. 24; Transcript of 7 April 2005, TF1-263, pp. 16-17; Exhibit 119, AFRC Transcript of 25 May 2005, TF1-334, p. 54; Transcript of 12 July 2005, TF1-361 p. 71-72 (CS); Transcript of 18 May 2007, Issa Sesay, p. 22; Transcript of 21 July 2005, TF1-360, p. 17 (CS).
[1677] The attack was unsuccessful and Musa later ordered a second attack on Kabala: Transcript of 18 May 2007, Issa Sesay, p. 22; Transcript of 21 July 2005, TF1-360, p. 17 (CS).
[1678] Transcript of 21 July 2005, Witness TF1-360, p. 22 (CS).
[1679] Transcript of 14 October 2004, George Johnson, p. 109; Transcript of 5 December 2005, TF1-184, pp. 25, 27. *See also* Transcript of 5 December 2005, TF1-184, p. 37.
[1680] Exhibit 119, AFRC Transcript of 13 June 2005, TF1-334, pp. 36-37; Transcript of 21 July 2005, TF1-360, pp. 20-21 (CS).
[1681] Transcript of 21 July 2005, TF1-360, p. 22 (CS); Transcript of 22 July 2005, TF1-360, pp. 16-17 (CS); Transcript of 18 July 2005, TF1-361, pp. 43-51.
[1682] Transcript of 21 July 2005, TF1-360, p. 22 (CS); Transcript of 5 December 2005, TF1-184, pp. 33-35.
[1683] Transcript of 5 December 2005, TF1-184, pp. 29-30.

that Gullit had been in radio contact with Sam Bockarie, despite SAJ Musa's orders.[1684]

858. SAJ Musa and the AFRC troops commenced their advance towards Freetown in November 1998.[1685] From Major Eddie Town, the troops attacked Mange and Lunsar.[1686] In Lunsar, a further altercation between SAJ Musa and Gullit occurred as Gullit had again contacted Bockarie by radio.[1687] From Lunsar, the AFRC troops bypassed Masiaka and attacked the Guinean ECOMOG troops at RDF Junction between Mile 38 and Masiaka. [1688]

859. Bockarie was disgruntled with the AFRC's insistence on operating independently as opposed to taking directions from him.[1689] Bockarie claimed on the BBC that his men had staged the ECOMOG attack and that troops under his command were marching on Freetown. When SAJ Musa discovered that it was the RUF radio operator Alfred Brown who had relayed information regarding the attack to Bockarie, he slapped Brown and warned him to stay away from the radio set and desist from disclosing their operations to the RUF. [1690]

860. When the AFRC forces reached Newton some time prior to 21 December 1998, SAJ Musa called a meeting and restructured the fighting force into six different Battalions, assigning Commanders to each Battalion.[1691] RUF officer Brown was one of several fighters designated as "standby officers" to replace injured Commanders if necessary.[1692] At Newton, the fighting force included up to 3,000 armed men. Also present were up to 2,000 civilians who had been abducted on the trip from Mansofinia to Camp Rosos and were forced to carry food and ammunition.[1693]

[1684] Transcript of 5 December 2005, TF1-184, p. 31.
[1685] Transcript of 5 December 2005, TF1-184, p. 33.
[1686] Transcript of 14 October 2004, George Johnson, pp. 110-112.
[1687] Transcript of 6 December 2005, TF1-184, p. 37 (CS).
[1688] This attack took place on 17 November, which was also SAJ Musa's birthday: Transcript of 5 December 2005, TF1-184, p. 33; Transcript of 14 October 2004, George Johnson, pp. 113-115.
[1689] Transcript of 18 May 2007, Issa Sesay, p. 22.
[1690] Transcript of 13 June 2005, TF1-334, pp. 47-48; Transcript of 5 December 2005, TF1-184, p. 33; Transcript of 18 May 2007, Issa Sesay, p. 23.
[1691] Transcript of 14 October 2004, George Johnson, pp. 116-118; Transcript of 5 December 2005, TF1-184, pp. 33-35; Exhibit 10, Command Structure at Newton.
[1692] Transcript of 14 October 2004, George Johnson, pp. 119; see Exhibit 10, Chart of Newton Command Structure.
[1693] Transcript of 14 October 2004, George Johnson, pp. 121-122.

1.8. The Attack on Freetown (December 1998 to January 1999)

1.8.1. RUF Plan to Attack Kono

861. By December 1998 Sesay had been recalled to Buedu from Pendembu and reinstated as BFC.[1694] In the first week of December, Bockarie convened a strategic meeting in his compound in Buedu, attended by senior members of the RUF including Sesay, Kallon, Isaac Mongor, Mike Lamin and Peter Vandi.[1695]

862. With a map of Sierra Leone on a blackboard, Bockarie briefed his Commanders on his plan to recapture Kono and Freetown. Bockarie proposed to attack on two fronts: one group of fighters would recapture Kono, Makeni and Masiaka while a second group would capture Segbwema, Kenema and Bo. The two groups would then unite to attack Freetown. The operation involved a massive mobilisation of troops and logistics.[1696] Bockarie requested Superman to contribute manpower to the campaign but he refused.[1697]

863. Although there is evidence that the ultimate objective of the RUF attack was to coordinate with the AFRC's movements so that the two forces could together recapture Freetown, there is no evidence that it was ever communicated to the AFRC. Moreover, the relationship between Bockarie and the AFRC remained highly strained as the AFRC continued to operate independently.[1698]

864. The recapture of Koidu Town was the first stage of Bockarie's plan and integral to its success. Bockarie supplied Sesay with a massive quantity of ammunition and ordered him to

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[1694] Transcript of 26 January 2005, TF1-071, p. 17; Transcript of 9 November 2007, DIS-281, pp. 62-65; Transcript of 12 February 2008, DIS-127, p. 52.

[1695] Transcript of 21 July 2006, TF1-371, pp. 42-43 (CS); TF1-045 Transcript 21 July 2005, pp. 69-75. Although Sesay denies being at the meeting (*see* Transcript of 16 May 2007, Issa Sesay, p. 14), the Chamber is satisfied from the detailed evidence of TF1-371 and TF1-045, and the fact that Sesay was BFC and the Commander in charge of the Kono attack, that he attended this crucial planning meeting.

[1696] Transcript of 21 July 2006, TF1-371, pp. 44-47.

[1697] Exhibit 35, Salute Report from Sam Bockarie to Foday Sankoh, p. 2365: "Superman had been asked to provide manpower for the Kono-Makeni operations, yet another order that he defied [...]."

[1698] Transcript of 21 July 2006, TF1-371, pp. 47-48. TF1-360 also testified that the RUF's objective was to attack Freetown, however it emerged in cross-examination that in a prior statement the witness had explained that the RUF's goal was to retake Kabala and Makeni in order to protect Kono and Kailahun and to increase the territory controlled by the RUF so that they would be in an advantageous position should peace talks eventuate: Transcript of 25 July 2005, TF1-360, pp. 32-35.

lead the attack, appointing Kallon as his deputy.[1699] Bockarie also promoted Kallon from Major to Colonel and assigned him as BFI.[1700] Pursuant to these assignments, Bockarie sent orders to Sesay and Kallon took orders from Sesay.[1701]

865. Several witnesses testified that the December 1998 attack on Koidu was code-named Operation Spare No Soul or Operation No Living Thing on account of orders from Bockarie to capture ground at all costs: buildings were to be burned and no living thing was to act as resistance to the fighting forces. Civilians who would opposed them were to be slaughtered.[1702] The Chamber notes, however, that witnesses also referred to other military attacks staged by AFRC/RUF fighters throughout the Indictment period as Operation No Living Thing or Operation Spare No Soul.[1703] We conclude that these terms were employed by Commanders to embolden their fighters prior to combat.[1704]

866. On the basis of this evidence, the Chamber finds that these terms did not refer exclusively to a particular military campaign but rather described a set of brutal and merciless tactics which AFRC/RUF fighters were encouraged to adopt in combat. Moreover, the Chamber observes the evidence that fighters told civilians before killing them or amputating their limbs that "this was Operation No Living Thing."[1705] The Chamber finds that the terms acquired notoriety among the civilian population and took on a pejorative connotation. The Chamber finds that the fighters used such terms deliberately to terrorise civilians.

[1699] Transcript of 30 May 2007, Issa Sesay, p. 36; Transcript of 21 November 2005, TF1-045, p. 75; Transcript of 28 July 2005, TF1-036, p. 61 (CS); Transcript of 22 June 2007, Issa Sesay, p. 28; Transcript of 18 April 2008, Morris Kallon, pp. 71, 94; Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, 27 September 1999, p. 2351; Exhibit 277, Situation Report of Blackguard Commander to the Leader, date unknown, p. 967-9679. *See also* Transcript of 14 January 2008, DIS-163. pp. 21-22.

[1700] Transcript of 17 May 2007, Issa Sesay, p. 65; Transcript of 30 May 2007, Issa Sesay, pp. 16-17; Transcript of 26 January 2005, TF1-071, p. 16; Exhibit 226, Comprehensive Report from Battle Field Commander Brigadier Issay Sesay to Chief of Defence Staff Major General Sam Bockarie, dated 21 January 1999, p. 25503.

[1701] Transcript of 18 April 2008, Morris Kallon, p. 10.

[1702] In relation to Operation Spare No Soul, *see* Transcript of 21 November 2005, TF1-045, p. 75. In relation to Operation No Living Thing, *see* Transcript of 6 April 2005, TF1-263, p. 38. Transcript of 21 July 2006, TF1-371, p. 45 (CS).

[1703] Transcript of 21 July 2004, TF1-077, p. 5; Transcript of 15 April 2005, TF1-141, p. 41; Transcript of 7 Jule 2005, TF1-122, p. 81; Transcript of 28 November 2005, TF1-101, p. 43; Transcript of 26 February 2008, DIS-103, p. 7.

[1704] *See* Transcript of 31 July 2006, TF1-371, pp. 58-59, where the witness agreed to the proposition that Operation No Living Thing was essentially "an enthused [...] morale booster for men going out likely to lose their lives" and it meant "just don't stop, keep going until you've got your target."

[1705] Transcript of 28 November 2005, TF1-101, p. 43.

1.8.2. The RUF Recapture Kono and Makeni

867. On 6 December 1998, Sesay, Kallon, Lamin and other RUF fighters travelled from Buedu to Superman Ground in Kono.[1706] The ammunition was transported to Kono by around 150 civilians sent from Kono to Kailahun for this purpose.[1707]

868. Upon his arrival at the 2nd Brigade Headquarters at Guinea Highway at Kono District on or about 9 December 1998, Sesay ordered the Brigade Commander RUF Rambo to assemble the RUF Commanders in a meeting. A general meeting was subsequently held on 11 December 1998, at which time Sesay announced the plan to attack Koidu and appointed Commanders to various operational roles for the mission. The attack was carried out successfully on 16 December 1998 and by the following day, Koidu Town was completely under RUF control.[1708]

869. Sesay's troops then attacked and captured Sewafe, Masingbi and Magburaka and proceeded towards Makeni.[1709] At about this time, Superman moved from Koinadugu District and launched a failed attack on Makeni in which he lost manpower and logistics.[1710] He contacted Sesay and proposed that they join forces to capture Makeni. Bockarie instructed Sesay to accept.[1711] Although Superman was initially fearful that Kallon would attempt to take his life, RUF Rambo persuaded Superman that he would be received by Sesay and Kallon in good faith. On 24 December 1998, Superman and his fighters joined with Sesay in a combined attack on Makeni, commanded by Sesay.[1712]

[1706] Exhibit 226, Comprehensive Report from Battle Field Commander Brigadier Issay Sesay to Chief of Defence Staff Major General Sam Bockarie, dated 21 January 1999, p. 25503; Transcript of 12 February 2008, DIS-127, p. 53.

[1707] Transcript of 21 January 2005, TF1-071 pp. 85-86.

[1708] Transcript of 21 January 2005, TF1-071, p. 87; Transcript of 10 July 2006, TF1-041, p. 55; Transcript of 9 November 2005, TF1-366, p. 11 (CS); Transcript of 8 November 2005, TF1-366, pp. 90-94; Transcript of 17 May 2007, Issa Sesay, pp. 89-90; Exhibit 226, Comprehensive Report from Battle Field Commander Brigadier Issay Sesay to Chief of Defence Staff Major General Sam Bockarie, dated 21 January 1999, pp. 25503-25505; Exhibit 225, Forum Minute, 2nd Brigade Headquarters, Kono Axis, dated 11 December 1998; Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, dated 27 September 1999, p. 2352.

[1709] Exhibit 226, Comprehensive Report from Battle Field Commander Brigadier Issay Sesay to Chief of Defence Staff Major General Sam Bockarie, dated 21 January 1999, pp. 25506-25507; Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, dated 27 September 1999, p. 2352.

[1710] Transcript of 24 March 2006, TF1-174, pp. 74-75 (CS); Transcript of 18 April 2008, Morris Kallon, p. 94.

[1711] Transcript of 15 January 2008, DIS-214, pp. 122-123 (CS); Transcript of 12 February 2008, DIS-127, p. 87.

[1712] Transcript of 9 November 2005, TF1-366, pp. 21-22 (CS); Transcript of 7 April 2005, TF1-263, pp. 20, 23; Transcript of 16 June 2008, DAG-018, pp. 76-77; Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, dated 27 September 1999, p. 2352. *See also*, in relation to Sesay's command role, Transcript of 14 January 2008,

870. The attack was successful and the RUF fighters assumed control of the town. Throughout the remainder of the Indictment period, Makeni remained an RUF stronghold and became its regional Headquarters.[1713]

871. The RUF's rapid success in Kono District and Makeni was not matched by its progress on the second flank: the troops sent by Bockarie to capture Kenema met stiff resistance from the Kamajors and retreated.[1714]

872. Following the capture of Makeni, the RUF established a revised command structure. The 1st Brigade was based in Buedu in Kailahun District; the 2nd Brigade in Kono District and Makeni (Bombali District); the 3rd Brigade in Magburaka in Tonkolili District; the 4th Brigade was in Kambia District; and the 5th Brigade was at Tongo Field in Kenema District.[1715]

873. Despite the cooperation between Superman and Sesay to recapture Makeni, the RUF troops in Makeni remained divided. Sesay was the most senior RUF Commander, but Superman retained a discrete group of fighters loyal to him. The command structure in Makeni was further complicated by the presence of a group of renegade AFRC fighters commanded by Brigadier Mani and STF fighters commanded by Bropleh.[1716] Relations between the various factions were difficult and Sesay was not always able to give orders to fighters affiliated with the AFRC, STF or Superman.[1717]

1.8.3. Gullit Assumes Command After the Death of SAJ Musa

874. On 23 December 1998, the AFRC troops under SAJ Musa captured the Benguema Military Barracks at Waterloo on the Freetown Peninsula. The Barracks contained a large store

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DIS-163. pp. 21-22 and Transcript of 17 June 2008, DAG-047, p. 33. The Chamber notes that Kallon testified that Superman's cooperation meant that Kallon was no longer Sesay's deputy: Transcript of 18 April 2008, Morris Kallon, p. 94. However, the Chamber does not accept this statement of Kallon as the evidence indicates that Superman was not effectively reintegrated into the RUF command structure at this time. The date of the attack, 24 December 1998, is reported to Bockarie by Sesay: Exhibit 226, Comprehensive Report from Battle Field Commander Brigadier Issa Sesay to Chief of Defence Staff Major General Sam Bockarie, dated 21 January 1999, p. 25507.

[1713] *See* Transcript of 23 May 2007, Issa Sesay, p. 19, where Makeni is referred to as the Regional Headquarters in a radio message from December 1999.

[1714] Transcript of 21 July 2006, TF1-371, pp. 46-47; Transcript of 21 November 2005, TF1-045, pp. 75-76.

[1715] Transcript of 21 January 2005, TF1-071, pp. 87-88 (CS). *See also*, in relation to the 2nd Brigade in Makeni, Exhibit 201, Memo to BFC from IO Second Brigade.

[1716] Transcript of 21 March 2006, TF1-174, p. 27 (CS); Transcript of 14 February 2008, DIS-085, pp. 54-55 (CS).

[1717] Transcript of 18 May 2007, Issa Sesay, pp. 61-62; Transcript of 18 February 2008, DIS-034, pp. 70-71, 77; Transcript of 3 March 2008, DIS-018, pp. 56-59, 61, 67-68.

of arms and ammunition. As the AFRC lacked the logistical capacity to transport the captured supplies, they decided to destroy the ammunition to prevent it from being utilised by ECOMOG. SAJ Musa was inadvertently killed in the explosion.[1718]

875. As a result, Gullit assumed overall command of the AFRC forces.[1719] On his instructions, one of the radio operators contacted Bockarie, informed him of SAJ Musa's death and requested RUF reinforcements for the attack on Freetown. Bockarie suspected that the call was a ruse and accused Gullit of attempting to deceive him.[1720]

876. On 5 January 1999, on the outskirts of Freetown, Gullit again called Bockarie. He informed him that his troops were poised to enter Freetown but lacked logistics, arms and ammunition and needed reinforcements. Bockarie told Gullit that his plan to attack Freetown was foolish. He nonetheless agreed to send reinforcements from Makeni and told Gullit to postpone the attack until their arrival.[1721]

877. The AFRC troops delayed their advance for approximately one day before continuing towards Freetown. We note that the decision not to wait for the promised RUF support appears to have been motivated by a combination of impatience on the part of the fighters and pressure from Kamajor attacks.[1722]

1.8.4. The AFRC Fighters Attack Freetown

878. The Chamber also notes that numerous witnesses including Sesay, Kallon, former RUF and AFRC members of varying seniority and civilians testified to the movements and conduct of the AFRC and RUF troops during the attack on Freetown and the content and frequency of communications between Commanders of the two factions. The testimony often lacked coherency and precision, particularly in relation to the timeframes and locations of particular

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[1718] Exhibit 119, Transcript from AFRC Trial, Transcript of 13 June 2005, TF1-334, pp. 50-58; Transcript from 20 March 2006, TF1-028, pp. 29-31.
[1719] Exhibit 119, AFRC Transcript of 13 June 2005, TF1-334, pp. 57-62; Transcript of 5 December 2005, TF1-184, pp. 34-35; Transcript of 18 October 2004, George Johnson, pp. 33-34; Transcript of 6 December 2005, TF1-184, p. 23 (CS).
[1720] Transcript of 21 July 2005, TF1-360, p. 36; Transcript of 18 October 2004, George Johnson, pp. 33-34; Transcript of 19 October 2004, George Johnson, pp. 72-73. *See also* Exhibit 119, AFRC Transcript of 13 June 2005, pp. 88-89; Transcript of 18 May 2007, Issa Sesay, pp. 76-78.
[1721] Transcript of 21 July 2005, TF1-360, pp. 29-31; Transcript of 18 October 2004, George Johnson, pp. 33-34, 58-59; Transcript of 19 October 2004, George Johnson, p. 72; Exhibit 119, AFRC Transcript of 13 June 2005, TF1-334, pp. 88-89.

events. The Chamber has carefully analysed the entirety of the evidence and has set out below its findings on the material facts that we find have been established.

879. In the early hours of 6 January 1999, the AFRC entered Freetown. The troops were divided into two flanks and ordered to take different routes through Ferry Junction to converge on the ECOMOG troops at Upgun. The AFRC forces overwhelmed ECOMOG at Upgun and continued towards the central part of Freetown. At approximately 7:30am, the fighters secured State House, the seat of Government.[1723]

880. Gullit then dispatched a group of AFRC troops to Pademba Road Prison, where they released the inmates, including former President JS Momoh and RUF members Gibril Massaquoi and Steve Bio.[1724] The troops searched for Sankoh, but were informed by one of the prisoners that he had been moved to another location.[1725]

881. Gullit contacted Bockarie from State House and informed him that his troops were in control of Freetown.[1726] In the afternoon of 6 January 1999, Bockarie made an announcement on Radio France International that Gullit's troops had captured Freetown and would continue to defend it.[1727] While the AFRC were at State House, Bockarie also announced over BBC Radio that he was reinforcing the troops in Freetown and that he had ordered that strategic positions, including Government buildings, be burned.[1728]

882. Throughout 6 and 7 January 1999, the AFRC forces attempted to advance into the western part of Freetown, but ECOMOG engaged the rebels in heavy fighting and they were

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[1722] Transcript of 5 December 2005, TF1-184, pp. 35-37; Transcript of 21 July 2005, TF1-360, p. 31 (CS).
[1723] Transcript of 18 October 2004, George Johnson, pp. 40-48; Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, p. 4. The Chamber notes that TF1-334 testified that State House was captured 5.45am and 6.30am. We find the minor difference in timing immaterial. *See also* Transcript of 21 July 2005, TF1-360, p. 34.
[1724] Transcript of 21 July 2005, TF1-360, pp. 32-33 (CS); Transcript of 17 January 2008, DIS-214, p. 106 (CS); Transcript of 18 October 2004, George Johnson, pp. 49-50; Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, pp. 5-8; Transcript of 5 December 2005, TF1-184, pp. 43, 47.
[1725] Transcript of 21 July 2005, TF1-360, p. 33 (CS).
[1726] Transcript of 18 October 2004, George Johnson, p. 59; Transcript of 21 July 2005, TF1-360, pp. 34-35 (CS). *See also* Transcript of 5 December 2005, TF1-184, p. 46 where the witness testifies that AFRC Commander Bazzy contacted Bockarie by radio from State House. The witness's testimony regarding the incident is disjointed and the Chamber is mindful that Bazzy and Gullit may have both been present during the two communications that Gullit made from State House. Accordingly, in the absence of more detailed evidence, the Chamber is not satisfied that the witness's observations prove that Bazzy made a distinct radio call to Bockarie.
[1727] Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, p. 20.
[1728] Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, p. 48; *see also* Transcript of 18 October 2004, George Johnson, p. 59; Transcript of 15 November 2005, TF1-366, p. 25.

unable to penetrate further across the city.[1729]

883. On the afternoon of 7 January 1999, Gullit sent a radio message to Bockarie to inform him that the AFRC were pulling back to State House and were unable to advance further. Bockarie advised Gullit that if ECOMOG forced them to retreat further, the troops should burn the central part of Freetown, including all key buildings, to the ground.[1730] Gullit ordered that petrol be distributed to the Commanders at State House and troops were dispatched to burn buildings.[1731]

1.8.5. The AFRC Retreat From Freetown

884. On 9 January 1999, under pressure from ECOMOG, the AFRC abandoned State House and began retreating through the eastern part of the city. Gullit again radioed Bockarie and requested him to send RUF reinforcements. Bockarie promised to do so and the two men arranged that AFRC fighters would meet the RUF reinforcements at a factory near Wellington on the eastern edge of Freetown. A group of AFRC fighters were dispatched to Wellington and a group of RUF troops led by RUF Rambo and Superman moved from Lunsar to the Waterloo area. However, ECOMOG controlled Kossoh Town, Hastings and Jui, which are situated between Wellington and Waterloo. There appears to have been no communication between Gullit's fighters and Rambo's group and ultimately the RUF troops were unable or unwilling to break through the ECOMOG position to meet the AFRC fighters.[1732]

885. Subsequently, a small group of around 20 fighters led by AFRC Commander Rambo Red Goat broke away from the RUF contingent and managed to join the AFRC forces in

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[1729] Transcript of 18 October 2004, George Johnson, pp. 52-55.

[1730] Transcript of 18 October 2004, George Johnson, p. 55; Transcript of 21 July 2005, TF1-360, pp. 36-37 (CS). Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, pp. 49-53.

[1731] Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, pp. 53-55. *See also* Transcript of 5 December 2005, TF1-184, pp. 50-52.

[1732] Transcript of 18 October 2004, George Johnson, pp. 56-59, 65; Transcript of 21 July 2005, TF1-360, pp. 38-43 (CS); Transcript of 25 July 2005, TF1-360, pp. 41-47; Transcript of 5 December 2005, TF1-184, pp. 52-55; Transcript of 28 July 2005, TF1-036, p. 65 (CS); Transcript of 15 November 2005, TF1- 366, pp. 16-20; Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, pp. 55-56. Although TF1-334 testifies that the communication was between Gullit and RUF Rambo, the Chamber is satisfied from the consistent evidence of other witnesses that Gullit spoke to Bockarie and Rambo was the Commander sent to lead the reinforcements. *See also* Transcript of 18 July 2005, TF1-361 pp. 62-63 (CS) where the witness testifies that Bockarie deliberately withdrew the RUF reinforcements due to suspicions that Gullit was planning to maintain the ground gained in Freetown exclusively for AFRC troops.

Freetown.[1733]

886. The AFRC based themselves at the Shankaras building at Ferry Junction for approximately one week after leaving State House. Gullit radioed Bockarie from there and informed him that the AFRC were retreating from Freetown. When Gullit told him that Kabbah had publicly requested a ceasefire over BBC radio, Bockarie told Gullit that he should not accept the request. The AFRC forces subsequently lost control of Ferry Junction to ECOMOG.[1734]

887. Over the next two days, the AFRC retreated to Kissy Mental Home. In a further radio communication, Bockarie told Gullit that all high profile politicians including former President Momoh, Victor Foh and Steve Bioh should be handed into Sesay's custody at Waterloo.[1735]

888. After two days at Kissy Mental Home, the AFRC retreated through Calaba Town to Orugu Village near Allen Town, where Gullit contacted Bockarie and informed him that the AFRC had lost control of Freetown, that as yet no reinforcements had arrived from the RUF and that they were trying to retreat to Waterloo. Bockarie told Gullit to retreat as quickly as possible to avoid further casualties and join the RUF at Waterloo.[1736] Approximately four days later, the AFRC troops arrived in Benguema where they established a base. Gullit and other senior Commanders travelled from Benguema to Waterloo to meet the RUF. The AFRC and

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[1733] Transcript of 21 July 2005, TF1-360, pp. 42-43 (CS); Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, pp. 57-59; Transcript of 5 December 2005, TF1-184, pp. 52-55; *see also* Transcript of 15 November 2005, TF1-366, pp. 23-24.

[1734] Transcript of 18 October 2004, George Johnson, pp. 59-60, 66, 69-71; Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, pp. 49-53. The Chamber notes that TF1-334 testified that Bockarie advised Gullit to refuse Kabbah's offer of a ceasefire while still at State House, as part of the same communication in which Bockarie recommended the burning of key Government buildings. However, TF1-334 also testified that the AFRC heard the public request for the ceasefire over the radio during the retreat from Freetown: *see* Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, p. 64. The Chamber prefers the more detailed and coherent evidence of George Johnson as to the sequence and content of the radio communications.

[1735] Gullit complied with this order on his arrival in Waterloo, although some of the former prisoners who had been at Pademba Road Prison, including Gibril Massaquoi and Joseph Momoh, refused to report to Buedu when Bockarie ordered them to do so. Transcript of 18 October 2004, George Johnson, pp. 61-62, 68-69, 72-73; Transcript of 28 July 2006, TF1-371, p. 7 (CS). Transcript of 15 April 2008, Morris Kallon, pp. 8-9; Transcript of 18 May 2007, Issa Sesay, pp. 87-88 (CS).

[1736] Transcript of 18 October 2004, George Johnson, pp. 60, 76, 78; Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, p. 43.

RUF met in Waterloo about three weeks after the AFRC had first entered Freetown.[1737]

1.8.6. RUF Support for the Attack on Freetown

889. On 27 December 1998, while the AFRC moved towards Freetown, Bockarie informed Sesay by radio that SAJ Musa had allegedly died. Bockarie told Sesay that he doubted the veracity of Gullit's claim and suspected that the AFRC were deliberately attempting to mislead the RUF. Despite his representations to Gullit, it seems that Bockarie did not immediately order the deployment of RUF troops.[1738] When the AFRC commenced their attack on Freetown regardless, Bockarie regarded their failure to wait for reinforcements as evidence that Gullit had lied to him and that SAJ Musa was in fact still alive.[1739]

890. On 28 December 1998, tensions between Sesay and Superman erupted after Rambo and Kallon reported to Sesay that Superman had secreted ammunition from the RUF store at Teko Barracks in Makeni. Bockarie ordered Sesay and Kallon to arrest Superman and bring him to Kailahun. Superman managed to evade arrest and fled from Makeni. Bropleh persuaded Superman to return and mediated a discussion between Superman and Sesay. Superman nonetheless remained suspicious of Sesay's intentions and in the second week of January 1999 he removed his men from Makeni and established a base nearby at Lunsar.[1740] By this time, the AFRC troops were encircled in Freetown.[1741]

891. Bockarie ordered Sesay to deploy RUF Rambo to Port Loko to assist Superman, whose troops were in Lunsar, to secure the Lungi axis towards Freetown. The attack by Superman and Rambo on Port Loko failed, and Bockarie ordered them to advance to Waterloo. [1742] The evidence adduced does not establish precisely when Bockarie issued these orders. While Bockarie's distrust of Gullit suggests that he deliberately delayed the provision of military assistance to the AFRC, there is evidence that Rambo's troops launched an attack on Masiaka,

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[1737] Transcript of 18 October 2004, George Johnson, pp. 78-79; Transcript of 5 December 2005, TF1-184, p. 64; *see also* Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, p. 55.
[1738] Transcript of 18 May 2007, Issa Sesay, pp. 76-79.
[1739] Transcript of 18 May 2007, Issa Sesay, pp. 78-80.
[1740] Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, pp. 2352-2353; Exhibit 35, Salute Report from Sam Bockarie to Foday Sankoh, p. 2365; Transcript of 18 May 2007, Issa Sesay, pp. 63-66; Transcript of 14 April 2008, Morris Kallon, p. 131. *See also* Transcript of 14 January 2008, DIS-163. pp. 21-22.
[1741] *Supra* para. 884.
[1742] Exhibit 35, Salute Report from Sam Bockarie to Foday Sankoh, p. 2365; Transcript of 18 May 2007, Issa Sesay, pp. 79, 81-83; Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, pp. 2352-2354.

near Port Loko, on 5 January 1999 and moved from there to Waterloo on 6 January 1999.[1743]

892. However, the contingent of Guinean ECOMOG troops stationed at Jui and Kossoh Town blocked the path of the RUF troops from Waterloo to Freetown. The RUF attacked the ECOMOG soldiers but were unable to pass through to Freetown. In addition, in-fighting persisted between Superman and Rambo.[1744] After about two weeks of heavy fighting, ECOMOG reinforcements arrived from Port Loko and opened a passage to secure the safe retreat of the Guinean ECOMOG troops to Port Loko.[1745] The removal of the ECOMOG troops appears to have facilitated the retreat of the AFRC from Freetown to Waterloo.[1746]

893. The Chamber finds that the RUF had no control over the AFRC forces in Freetown during the attack and further finds that the RUF did not form part of a common operation with the AFRC forces for this attack on 6 January 1999.

1.8.7. The AFRC and the RUF Meet at Waterloo

894. After the AFRC retreated from Freetown, Sesay chaired a meeting of AFRC and RUF Commanders including Kallon, Rambo and Superman at which the two groups planned to cooperate in a second attack on Freetown. This second attack failed because RUF fighters had seized from the retreating AFRC fighters the property, money and ammunition looted by the AFRC in Freetown, resulting in animosity between the two groups.[1747]

895. After the joined operation to capture Freetown failed, Sesay returned to Makeni and Kallon travelled to Magburaka. Superman retreated to Lunsar with fighters loyal to him. AFRC

[1743] Exhibit 227, Report from Overall Intelligent Officer Commander and Black Guard Adjutant to BFC Issa Sesay, dated 21 January 1999, p. 25494.

[1744] Exhibit 35, Salute Report from Sam Bockarie to Foday Sankoh, p. 2365; ; Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, pp. 2352-2354; Transcript of 18 May 2007, Issa Sesay, pp. 79, 81-83; Exhibit 277, Situation Report of Blackguard Commander to the Leader, date unknown, p. 9679, providing that 'Col. Rambo also tried his level best to link up with the other brothers that entered Freetown, but the Freetown operation was not coordinated as the said Commander Black Jah [Gullit] was not going by the instruction from the High Command.'

[1745] Transcript of 18 May 2007, Issa Sesay, pp. 84-86; Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, pp. 2352-2354; Transcript of 14 April 2008, Morris Kallon, p. 131; Exhibit 227, Report from Overall Intelligent Officer Commander and Black Guard Adjutant to BFC Issa Sesay, dated 21 January 1999, pp. 25494-25495.

[1746] Transcript of 28 July 2005, TF1-036, p. 65 (CS).

[1747] Transcript of 18 October 2004, George Johnson, pp. 78-80; Transcript of 21 July 2005, TF1-360, pp. 45-46 (CS); Transcript of 5 December 2005, TF1-184. pp. 65-66; Transcript of 18 July 2005, TF1-361 pp. 62-63 (CS); Transcript of 7 July 20006, TF1-334, p. 47 (CS); Exhibit 277, Situation Report of Blackguard Commander to the

Commanders Gullit and Five-Five went to Makeni with Sesay.[1748]

896. Kamara retreated with a group of fighters to an area known as the West Side Jungle in Port Loko District.[1749] This group remained in this area throughout 1999 and 2000 and became known as the West Side Boys.[1750] Throughout this period, they did not work in concert with the Accused.[1751]

1.8.8. Role of the Accused

1.8.8.1. Sesay

897. Following the successful attack on Makeni, Sesay established his Headquarters there and he was known to the local civilians as the leader of the RUF.[1752] On 27 December 1998, Sesay called a meeting at the Town Hall attended by civilians, at which time he introduced himself as the Battle Field Commander of the RUF. He announced to the civilians that the RUF were in Makeni to fight ECOMOG and the CDF and not the civilians.[1753]

898. Several days after his arrival, Sesay ordered the Brigade Commander in Kono to transfer the MP Commander, the IDU Commander, the S4 Commander; the combat medic Commander and the G5 Commander from Kono to Makeni. Sesay ordered these unit Commanders to establish offices in the same compound where his own office was located, and to report to him.[1754]

899. Sesay learned of the attacks staged by the AFRC in Port Loko and the Western Area during their advance towards Freetown in December 1998 from BBC Radio; he had no prior

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Leader, date unknown, pp. 9679-9680; *see also* Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, pp. 104-105, 108-113; Transcript of 15 November 2005, TF1- 366, pp. 25-26.

[1748] Transcript of 18 October 2004, George Johnson, p. 80; Transcript of 21 July 2005, TF1-360, pp. 46, 48 (CS) (testifies that Kallon and Sesay moved between Makeni and Magburaka); Transcript of 15 November 2005, TF1-366, p. 27.

[1749] Transcript of 18 October 2004, George Johnson, pp. 80-83; Transcript of 6 December 2005, TF1-184, p. 59; Transcript of 22 May 2007, Issa Sesay, p. 80.

[1750] Transcript of 6 December 2005, TF1-184, p. 59 (CS); Transcripts of 18 May 2007, Issa Sesay, p. 101.

[1751] Exhibit 119, Transcript of 15 June 2005, Witness TF1-334, p. 23 (92*bis*).

[1752] Transcript of 15 January 2008, DIS-214, p. 122 (CS); Transcript of 12 February 2008, DIS-127, p. 87; Transcript of 14 January 2008, DIS-163. pp. 21-22; TF1-174, Transcript 24 March 2006, p. 84-85; Transcript of 16 June 2008, DAG-018, pp. 36, 46-47; Transcript of 3 March 2008, DIS- 018, p. 55.

[1753] Transcript of 18 May 2007, Issa Sesay, pp. 50, 58-59; Transcript of 15 February 2008, DIS-010, p. 11.

[1754] Transcript of 18 May 2007, Issa Sesay, pp. 59-62.

knowledge of the group's movements.[1755]

900. Sesay remained in radio contact with Rambo while Rambo was deployed at Waterloo fighting ECOMOG troops.[1756] We conclude that Sesay was not in contact with AFRC Commanders in Freetown until he arrived in Waterloo in January 1999. As noted above, following the unsuccessful attack to re-capture Freetown by AFRC/RUF forces at Waterloo, Sesay returned to Makeni.

1.8.8.2. Kallon

901. There is little evidence pertaining to Kallon's role throughout the Freetown attack. Kallon was in Makeni with Sesay in late December 1998 and was subsequently present at Waterloo when the retreating AFRC troops arrived. There is no evidence that Kallon communicated with AFRC leaders in Freetown. The Chamber finds that the Prosecution has not established that Kallon was present with the RUF troops that were fighting ECOMOG.[1757]

902. As noted above, following the failed attack on Freetown by AFRC/RUF troops at Waterloo, Kallon travelled to Magburaka.

1.8.8.3. Gbao

903. Gbao remained the OSC and Overall IDU Commander in Kailahun District throughout the AFRC attack on Freetown. Based on the evidence, the Chamber is satisfied that Gbao did not participate in the RUF military operations in Kono, Makeni, Freetown and Port Loko and that he did not communicate with senior RUF or AFRC leaders in relation to

[1755] Transcript of 18 May 2007, Issa Sesay, pp. 76-79. The Chamber notes the evidence of TF1-334 that after SAJ Musa's death Gullit radioed Sesay and Superman, both of whom promised reinforcements for the Freetown attack. The witness stated that Sesay and Superman informed Gullit that their respective troops were moving to attack Makeni: Exhibit 119, AFRC Transcript of 13 June 2005, TF1-334, pp. 91-92. No other witness testified to these communications.

[1756] Transcript of 18 May 2007, Issa Sesay, p. 84 (CS).

[1757] The Chamber notes that George Johnson, TF1-366 and TF1-360 testified that Kallon accompanied Rambo and Superman to Waterloo: Transcript of 18 October 2004, George Johnson, pp. 56-59, 65; Transcript of 15 November 2005, TF1- 366, pp. 23-24; Transcript of 25 July 2005, TF1-360, p. 49 (CS). However, other witnesses referred exclusively to Rambo and Superman: Transcript of 5 December 2005, TF1-184, pp. 52-55; Transcript of 28 July 2005, TF1-036, p. 65 (CS); Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, pp. 55-56. Kallon testified that he travelled from Makeni with Sesay after the fighting at Waterloo: Transcript of 15 April 2008, Morris Kallon, pp. 10-11. The Chamber finds the evidence insufficient to establish Kallon's presence in Waterloo.

these events.[1758]

1.9. The RUF from February 1999 to September 2000

1.9.1. RUF Infighting in Makeni

904. In February 1999, Bockarie promoted Sesay, Mike Lamin, Peter Vandi, Isaac Mongor, Superman and Kallon to Brigadier.[1759]

905. Although there is evidence that while Sesay was in Makeni and Superman was in Lunsar they cooperated sporadically in relation to military operations, the relationship between the two Commanders remained dominated by hostility and suspicion. On one occasion, Sesay visited Lunsar to inform Gibril Massaquoi that Bockarie wanted him to report to Buedu. Superman and his men opened fire on Sesay's vehicle. Sesay managed to escape, but two of his men were killed.[1760]

906. In late March 1999, Superman and RUF fighters loyal to him travelled from Lunsar to Makeni and attacked Sesay in his compound in the early hours of the morning. Superman was assisted by AFRC Commanders including Gullit. The fighters killed Sesay's Brigade Commander RUF Rambo and several others but Sesay managed to escape and he fled to Magburaka. Sesay then travelled to Kono, where he remained for two weeks before travelling to Buedu.[1761]

907. Superman's forces remained in the Makeni area. By July 1999, Brigadier Mani's troops controlled the area outside of Makeni near Kabala Road and Kamabai, while Bropleh had left

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[1758] The Chamber notes the evidence of TF1-371 that Gbao attended the meeting in Bockarie's compound at which the RUF plan to attack Kono and Freetown was formulated: *see* Transcript of 21 July 2006, TF1-371, pp. 42-43 (CS). However, the witness's prior written statements regarding attendance at the meeting did not refer to Gbao: *see* Transcript of 2 August 2006, TF1-371, pp. 18-24 (CS). The Chamber recalls that Gbao, although senior, was not an operational Commander. In addition, TF1-045 was present at the meeting and does not testify that Gbao attended: TF1-045 Transcript 21 July 2005, pp. 69-75. The Chamber finds that it is not established beyond reasonable doubt that Gbao was present.

[1759] Transcript of 31 May 2007, Issa Sesay, p. 31; Transcript of 2 February 2005, TF1-012, p. 28; Transcript of 29 February 2008, DIS-089, pp. 73-74.

[1760] Exhibit 36, Salute Report from Issa Sesay to Foday Sankoh, pp. 2354-2355; Exhibit 277, Situation Report of Blackguard Commander to the Leader, date unknown, p. 9680.

[1761] Transcript of 22 May 2007, Issa Sesay, pp. 49-57; Transcript of 17 July 2006, TF1-041, pp. 97-99 (CS); Exhibit 119, AFRC Transcript of 15 June 2005, TF1-334, pp. 18-19; Transcript of 3 March 2008, DIS-018, pp. 61-62, 68-69; Exhibit 277, Situation Report of Blackguard Commander to the Leader, date unknown, pp. 9680-9681.

Makeni.[1762]

908. On 7 July 1999, the RUF and the Kabbah Government signed the Lomé Peace Accord. As a result of the power sharing arrangement therein, Sankoh became Chairman of the Strategic Mineral Resources Commission and RUF Commanders including Mike Lamin and Peter Vandi were appointed as Government Ministers and Deputy Ministers.[1763] The Accused did not receive Government positions. The Lomé Peace Accord further provided for the RUF to be transformed into a political party, which became known as the RUFP.[1764]

909. On 20 July 1999, Bockarie transmitted a written order to all RUF fighters informing them of the ceasefire provisions in the Lomé Peace Accord and instructed them to abide by these provisions.[1765]

1.9.2. Sesay returns to Makeni and Bockarie resigns from the RUF

910. In October 1999, Sankoh ordered Bockarie to send Sesay to Makeni to take command there. Sesay went to Makeni with Kallon, Gbao and other officers and fighters.[1766] Sankoh ordered Superman to cede command to Sesay and move to Lunsar. Superman, Isaac Mongor, Gibril Massaquoi and CO Rocky left Makeni and travelled to Lunsar.[1767]

911. Superman subsequently sends messages to Sesay advising him of military issues, requesting arms and ammunition and seeking instructions.[1768] However, fighters loyal to Superman in Kambia were also refusing to obey Sesay's orders until Sankoh intervened to order them to do so.[1769] In addition, Superman remained convinced that Bockarie ultimately intended to kill him.[1770] The Chamber finds that the extent to which Superman and fighters under his command were effectively reintegrated into the RUF command structure at that time is unclear.

[1762] Transcript of 22 May 2007, Issa Sesay, p. 87.
[1763] Exhibit 304, Lomé Accord, 7 July 1999, Article V; Transcript of 22 May 2007, Issa Sesay, p. 90 (CS); Transcript of 24 November 2005, TF1-045, p. 20; Transcript of 16 May 2008, Tejan Kabbah, pp. 9, 56.
[1764] Exhibit 304, Lomé Accord, 7 July 1999, Article III. *See also* Transcript of 2 August 2006, TF1-371, pp. 46-47.
[1765] Exhibit 207, RUF Defence Headquarters Memo dated 20 July 1999.
[1766] Transcript of 22 May 2007, Issa Sesay, p. 91 (CS).
[1767] Transcript of 22 May 2007, Issa Sesay, pp. 91-92, 94 (CS); Transcript of 17 January 2008, DIS-214, p. 87 (CS).
[1768] Exhibit 33, RUF Radio Log Book, p. 8734, *see also* pp. 8737-8738, p. 8742
[1769] Transcript of 14 July 2005, TF1-361 pp. 49-54 (CS).
[1770] See Exhibit 318, Letter from Denis 'Superman' Mingo to Foday Sankoh, dated 1 October 1999.

912. In November 1999, the RUF transformed itself into a political party known as the RUFP.[1771]

913. By December 1999, Bockarie and Sankoh were in open dispute over the implementation of the Lomé Peace Accord and Bockarie no longer took orders from Sankoh.[1772] Bockarie was not present at the peace negotiations prior to the Lomé Peace Accord and he became highly dissatisfied with it. He considered the Accord to be an attempt by the Kabbah Government to dupe the RUF leadership and he objected strongly to its disarmament requirements.[1773] In view of his recalcitrance, Sankoh and rebels loyal to him made plans to attack Bockarie in Buedu. However, Bockarie learned of this and fled to Liberia, announcing his resignation to the RUF in a radio message dated 19 December 1999.[1774]

914. Following Bockarie's departure, Sankoh restructured the RUF. Sankoh did not recognise the post of Chief of Defence Staff which Bockarie had created and occupied since 1998. Sankoh also refused to recognise the promotions that Bockarie had issued. Accordingly, in late 1999 Sankoh appointed Sesay BFC and in early 2000 he appointed Kallon BGC.[1775] By this time, Superman had disarmed and Sankoh appointed him the Chairman of the RUFP in Port Loko District.[1776]

915. In late 1999, the first UNAMSIL peacekeepers arrived in Sierra Leone to commence the implementation of the disarmament process envisaged in the Lomé Peace Accord. These peacekeepers were deployed around Makeni and Magburaka from 4 January 2000.[1777]

[1771] Transcript of 15 April 2008, Morris Kallon, p. 43.
[1772] Exhibit 357B, Radio Message from Sankoh to All Commanders, dated 6 December 1999, in which Sankoh instructs that no one is to listen to Bockarie's 'evil plan'.
[1773] Exhibit 199, Minutes of RUF Meeting of 17 August 1998 in Buedu. The Chamber notes that the date of the document is clearly an error as the document pertains to the outcomes of the Lomé Accord which was signed in July 1999.
[1774] Transcript of 21 July 2005, TF1-360, p. 50 (CS); Transcript of 28 July 2005, TF1-036, p. 26 (CS); Transcript of 9 November 2005, TF1-366, pp. 45-47 (CS); Transcript of 23 May 2007, Issa Sesay, p. 17; Exhibit 33, RUF Radio Log Book, p. 8764. *See also* Exhibit 35, Salute Report from Sam Bockarie to Foday Sankoh, p. 2369 where Bockarie implies that Sankoh was under duress from the Kabbah Government in the peace negotiations.
[1775] Transcript of 18 May 2007, Issa Sesay, p. 27; Transcript of 30 May 2007, Issa Sesay, p. 40; Transcript of 14 April 2008, Morris Kallon, pp. 46-47; Transcript of 21 January 2005, TF1-071, pp. 24-25; Transcript of 21 July 2005, TF1-360, pp. 50-51.
[1776] Transcript of 18 April 2008, Morris Kallon, p. 106; Transcript of 30 May 2007, Issa Sesay, p. 40.
[1777] Exhibit 190, UNAMSIL Board of Inquiry Report No. 00/19, dated 20 September 2000, p. 20631. *See infra* para. 1753-1754.

1.9.3. Sesay becomes Interim Leader of the RUF

916. On 17 May 2000 Sankoh was arrested in Freetown on treason charges, leaving the RUF without official leadership.[1778] Concerned that the absence of a recognised overall leader of the RUF could undermine the carefully negotiated peace process, the ECOWAS leaders invited Sesay to meet with them to discuss the leadership question. On 25 July 2000, Sesay travelled to Liberia and met with various ECOWAS leaders including Charles Taylor and the Nigerian President Obasanjo. The ECOWAS leaders requested Sesay to assume the leadership of the RUF and implement the Lomé Peace Accord in Sankoh's absence.

917. As Sesay did not feel able to unilaterally accept the offer, he returned to Kono and convened a meeting to discuss the ECOWAS proposal. The meeting was attended by over 30 RUF Commanders including Gbao, Kallon and Gibril Massaquoi. Although other candidates for the leadership were nominated, the majority of Commanders present endorsed Sesay. Sesay returned to Monrovia and informed the ECOWAS leaders that he would act as interim Leader of the RUF. An announcement to this effect was subsequently broadcast on BBC Radio.[1779]

918. Following Sesay's assumption of the leadership, he appointed Kallon as BFC. About this time, Superman decided to return to Liberia.[1780] Kailondo subsequently became BGC.[1781]

1.9.4. Role of the Accused

1.9.4.1. Sesay

919. In February 1999, Sesay remained BFC[1782] and was based in Makeni.[1783] By virtue of his assignment, status and rank, Sesay was the most senior RUF Commander throughout Sierra Leone after Bockarie. As Bockarie was in Buedu, Sesay was the most senior RUF officer in Kono in 1999.[1784]

920. As BFC, Sesay was provided with written briefings on RUF troop deployments and

[1778] Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, p. 3582. *Supra* para. 42.
[1779] Transcript of 29 May 2007, Issa Sesay, pp. 55-62,68-69. *See also* Transcript of 10 March 2008, Daniel Opande, pp. 99, 104.
[1780] Transcript of 30 May 2007, Issa Sesay, p. 40.
[1781] Transcript of 21 January 2005, TF1-071, p. 26.
[1782] Transcript of 22 May 2007, Issa Sesay, p. 39.
[1783] Transcript of 22 February 2008, DIS-009, pp. 88-90.

other key developments in the Makeni-Magburaka area.[1785] The security units in Makeni also reported to Sesay until Gbao arrived in February 1999, when they reported to Gbao.[1786]

921. The Chamber is satisfied that following his departure from Makeni in March 1999, Sesay remained an active military Commander who exercised command and control over RUF fighters in particular in the Makeni-Magburaka area. For instance, in June 1999 he "chartered" a group of 200 Liberian ULIMO fighters to attack Lunsar and Makeni.[1787] Sesay testifies that between April and June 1999, he was in Buedu and received information from Bockarie and sent messages to Sankoh in Bockarie's absence.[1788]

922. We find that throughout 1999, Sesay was in constant radio contact with Sankoh and Bockarie and that he retained their support. Sesay regularly reported via radio to Bockarie and Sankoh. His communications described the situation on the ground; informed them of actions he had taken such as dispatching troops and issuing orders and updated them on movements of NGOs and UN personnel in RUF held areas. Bockarie and Sankoh responded with orders[1789] and Sesay implemented orders received from them.[1790]

923. During that period RUF Commanders reported to Sesay on varied matters such as troop movements and the relationship between the RUF and civilians and sought instructions from Sesay.[1791] Sesay also received reports which he passed on to Bockarie and Sankoh.[1792] RUF Commanders often sent messages to Sankoh or Bockarie through Sesay,[1793] which is indicative that his assignment as BFC was acknowledged and well respected. Sesay's ability to discipline is demonstrated by the evidence that on one occasion a Commander sought his assistance with respect to recalcitrant troops. [1794]

[1784] Transcript of 26 February 2008, DIS-065, p. 104.
[1785] Exhibit 278, Report from the Makeni Headquarters Commander to the Battle Field Commander, dated 14 February 1999; Exhibit 315, Memo from the Headquarter Commander's Office to the Battle Field Commander dated 5 February 1999.
[1786] Transcript of 18 May 2007, Issa Sesay, pp. 60-62
[1787] Exhibit 32, p. 8668A. The Chamber notes that Sesay denies this incident: *see* Transcript 22 May 2007, p. 73.
[1788] Transcript of 22 May 2007, pp. 71-72, 77.
[1789] Exhibit 32, RUF Radio Log Book, pp. 8680-8681, 8687, 8689, 8693, 8699, 8701, 8708-8709, 8723; Exhibit 33, RUF Radio Log Book, pp. 8732, 8736, 8788-8789, 8780, 8780A, 8782-8783, 8792.
[1790] Exhibit 32, RUF Radio Log Book, p. 8687, 8689, 8699, 8693, 8695.
[1791] Exhibit 32, RUF Radio Log Book, p. 8683, 8686, 8702.
[1792] Exhibit 32, RUF Radio Log Book, p. 8697.
[1793] Exhibit 32, RUF Radio Log Book, p. 8691, 8696, 8705, 8721; Exhibit 33, RUF Radio Log Book, p. 8765.
[1794] Exhibit 33, RUF Radio Log Book, p. 8817.

924. Between November 1999 and January 2000 Sankoh continuously passed instructions to Sesay.[1795] In one message Sankoh stated that he was sending to Sesay arms and a satellite telephone. He went on to appoint Sesay as the Chairman of the Northern Region of the RUFP, stating that "[y]ou are their father and [...] all chairman of the various Districts are to take instructions from you."[1796] Sesay confirmed that Sankoh sent him a satellite telephone to facilitate communication in December 1999 or January 2000.[1797]

925. In another instance, on 30 January 2000 Sesay contacted Sankoh from Koinadugu District to inform him that he had recently sent circulars to all RUFP Civil Authorities in Koinadugu District advising them that a "Grand Meeting" would be held after which they would be required to transmit Sankoh's message to the population of Koinadugu. [1798] This message indicates that Sesay's command responsibilities extended over a wide geographical area and encompassed both the RUF's military and political affairs.

926. By late December 1999, following Bockarie's departure, Sesay was subordinate only to Sankoh in the RUF command structure, although his assignment as BFC remained the same.[1799] On 17 January 2000, Sankoh directed all RUF Commanders in Sierra Leone to send messages to him through Sesay, not directly.[1800] Commanders regularly reported to Sesay throughout early 2000, providing him with information and seeking instructions.[1801] Sesay also appointed a Commander to Kailahun District,[1802] which in the Chamber's view demonstrates that his effective control further extended to RUF fighters in that District.

927. Sesay was based in Makeni but travelled to Kono and Kailahun on Sankoh's

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[1795] Exhibit 32, RUF Radio Log Book pp. 8685, 8690, 8694.
[1796] *See* message from Sankoh to Sesay dated 5 December 1997, Exhibit 33, RUF Radio Log Book, pp. 8875, 8877.
[1797] Transcript of 18 May 2007, Issa Sesay, p. 26.
[1798] Exhibit 33, RUF Radio Log Book, pp. 8784.
[1799] Transcript of 29 March 2006, Leonard Ngondi, p. 6.
[1800] Exhibit 33, RUF Radio Log Book 8887.
[1801] Exhibit 33, RUF Radio Log Book, p. 8777-8778, 8780, 8784-8786, 8791-8792, 8800, 8802-8804, 8805, 8813.
[1802] Exhibit 33, RUF Radio Log Book, p. 8824. The Chamber does not accept Sesay's testimony that in this message he merely sought Sankoh's approval to appoint a Commander: Transcript of 23 May 2007, Issa Sesay, pp. 55-56. This construction of the evidence is inconsistent with the language of the message and Sesay's assignment as BFC, in which capacity he was senior to all Commanders except Sankoh. The Chamber accepts that if Sankoh had disagreed with Sesay's decision he would have countermanded it, but considers this to be the normal functioning of a military hierarchy. It does not establish that Sesay did not have the authority to issue the appointment.

instructions.[1803] In February 2000, Sesay was transferred to Kono District by Sankoh, although he continued to regularly visit Makeni. As BFC, Sesay had access to a radio in Kono District and received reports there.[1804] By this time, Sesay was a General.[1805] UNAMSIL peacekeepers knew Sesay as the Commander of the RUF.[1806] While in Makeni, Sesay lived at Teko Barracks.[1807]

1.9.4.2. Kallon

928. In February 1999, Kallon remained BFI[1808] and was Sesay's deputy.[1809] Kallon as a Brigadier was deployed to Magburaka, following the attack on Sesay, with a view to recapturing Makeni from Superman.[1810] Kallon was the RUF Commander in Magburaka from March to October 1999, during which time he took orders from Bockarie.[1811] Kailondo and Gbao, among other RUF Commanders, were also present in Magburaka.[1812]

929. Throughout 1999, Kallon was in direct contact with Sankoh.[1813] In 2000, Kallon was also reporting to Sankoh and Sesay regarding the situation in Makeni.[1814]

930. Kallon continued to serve as Sesay's deputy after he assumed the position of BGC from Superman in early 2000[1815] and he then regularly reported to Sesay.[1816] In March 2000, while he was in Kono, Sesay advised all officers that Kallon was in command at Makeni in his absence.[1817] Three days later, Kallon provided a situation report to Sesay.[1818] Kasoma was also

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[1803] Transcript of 23 May 2007, Issa Sesay, p. 18.
[1804] Transcript of 23 May 2007, Issa Sesay, pp. 18, 48; Transcript of 29 March 2006, Leonard Ngondi, p. 11; Transcript of 22 October 2007, DIS-069, pp. 23-27 (CS); Transcript of 25 October 2007, DIS-069, pp. 40-41 (CS); In light of the consistent evidence of witnesses that Sesay was the overall Commander of the RUF fighters in 2000, the Chamber does not accept the evidence of Sesay that he was assigned to Kono as a Mining Unit Commander as Sankoh was displeased with him: *see* Transcript of 23 May 2007, Issa Sesay, pp. 45-48.
[1805] Transcript of 29 March 2006, Leonard Ngondi, p. 11; Transcript of 20 June 2006, Ganase Jaganathan, p. 39.
[1806] Transcript of 26 June 2006, Joseph Mendy, pp. 81, 93-94; Transcript of 29 March 2006, Leonard Ngondi, pp. 7-10.
[1807] Transcript of 26 June 2006, Joseph Mendy, pp. 93-94.
[1808] Transcript of 22 May 2007, Issa Sesay, p. 39.
[1809] Transcript of 29 March 2006, Leonard Ngondi, pp. 6, 8, 10-11.
[1810] Exhibit 35, Salute Report Sam Bockarie, p. 2368. *See also* Transcript of 17 April 2008, Morris Kallon, p. 9.
[1811] Transcript of 15 April 2008, Morris Kallon, p. 26; Transcript of 30 May 2007, Issa Sesay, pp. 38-39; Transcript of 1 June 2007, Issa Sesay, p. 50; Transcript of 1 May 2008, DMK-095, p. 32.
[1812] Transcript of 1 June 2007, Issa Sesay, p. 50.
[1813] Transcript of 23 May 2007, Issa Sesay, p. 16.
[1814] Exhibit 33, RUF Radio Log Book, pp. 8823, 8836.
[1815] Transcript of 21 July 2005, TF1-360, p. 50 (CS).
[1816] Exhibit 32, RUF Radio Log Book, p. 8700; Exhibit 33, RUF Radio Log Book, p. 8803.
[1817] Exhibit 33, RUF Radio Log Book, p. 8806.

told that Morris Kallon, one of Sesay's subordinate Commanders, was very close to him, and was the one who usually carried out Sesay's orders.[1819]

931. Kallon remained in Magburaka until April 2000, when he moved to Makeni as the 5th Brigade Commander.[1820] By this time he had been promoted to Brigadier.[1821]

932. When Sesay was absent from Makeni, Kallon, Gbao and Kailondo were the most senior Commanders.[1822] Kailondo was a Colonel and a Vanguard and at the time was Kallon's deputy.[1823] Kailondo was also the Brigade Commander for Makeni and the BFI, although this latter assignment was "dormant" as there was no fighting in Makeni at the time.[1824]

933. After Sesay's appointment as Interim Leader of the RUF in July 2000, Kallon became BFC.[1825]

1.9.4.3. Gbao

934. In February 1999, Sesay transferred Gbao to Makeni to enforce order and discipline among the troops there.[1826] Gbao was a Lieutenant Colonel in Makeni. By May 2000, Gbao was a full Colonel.[1827] He retained the assignments of OSC,[1828] Chairman of the Joint Security Board, and Chief of the IDU.[1829]

935. In March 1999, Gbao left for Magburaka with Kallon due to the infighting between Sesay and Superman in Makeni.[1830] Throughout 1999, Gbao was in direct contact with Sankoh.[1831] Gbao returned to Makeni in October 1999, where he was based at the time of the

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[1818] Exhibit 33, RUF Radio Log Book, p. 8808-8809.
[1819] Transcript of 3 March 2006, Edwin Kasoma p. 40.
[1820] Transcript of 8 May 2008, DMK-146, p. 103 (CS); Transcript of 29 April 2008, DMK-108, p. 63; Transcript of 23 October 2007, DIS-069, p. 31 (CS); Transcript of 20 June 2006, Ganase Jaganathan, p. 24.
[1821] Transcript of 29 March 2006, Leonard Ngondi, pp. 6, 8, 10-11.
[1822] Transcript of 1 June 2007, Issa Sesay, p. 56.
[1823] Transcript of 25 May 2007, Issa Sesay, p. 34.
[1824] Transcript of 23 May 2007, Issa Sesay, pp. 19-20.
[1825] Transcript of 21 January 2005, TF1-071, p. 26.
[1826] Transcript of 30 May 2007, Issa Sesay, p. 46; Transcript of 18 May 2007, Issa Sesay, p. 62; Transcript of 16 June 2008, DAG-047, p. 83; Transcript of 17 January 2008, DIS-214, pp. 87, 110-111 (CS).
[1827] Transcript of 31 May 2007, Issa Sesay, p. 38.
[1828] Transcript of 10 July 2006, TF1-041, p. 60 (CS); Transcript of 29 March 2006, Leonard Ngondi, pp. 6-7.
[1829] Transcript of 17 April 2008, Morris Kallon, p. 9; Transcript of 26 January 2005, TF1-071, p. 62; Transcript of 20 June 2006, Ganase Jaganathan, p. 16.
[1830] Transcript of 30 May 2007, Issa Sesay, p. 52
[1831] Transcript of 23 May 2007, Issa Sesay, p. 16

UNAMSIL attacks in May 2000.[1832] Gbao lived at Teko Barracks in Makeni.[1833]

936. The evidence indicates that Gbao retained the same responsibilities in relation to the security units in Makeni that he had held in Kailahun District.[1834] However, the Chamber finds that Gbao enjoyed substantially increased authority over RUF fighters and that certain limits to his investigative and enforcement powers were no longer strictly applicable. There is evidence that Gbao was able to initiate his own investigations by this stage and if Gbao found fighters guilty "he will punish them severely."[1835]

937. The Chamber notes the evidence of DAG-047 as to his first encounter with Gbao. DAG-047 was captured outside Makeni in late 1999 by a group of rebels who confiscated his shoes and made him carry a heavy bag of rice. When the rebels and DAG-047 encountered Gbao on the road, Gbao stopped the rebels and freed the civilian. Gbao told the rebels that there was an RUF law against forcing civilians to carry loads. Gbao ordered the rebels to drop their guns and return the shoes to DAG-047, which they did. Gbao then punished the rebels for their misconduct.[1836] This evidence indicates that Gbao was able to independently issue orders to fighters and that his seniority and authority was such that fighters he encountered at random recognised and obeyed him.

938. DAG-047 further testified that when civilians reported misconduct by RUF fighters to Gbao's subordinates, the report was passed to Gbao and Gbao punished the fighters concerned, including by arresting them and beating them.[1837] DAG-047 stated that on one occasion, RUF fighters attempted to loot his torchlight, but the fighters desisted when he threatened that he would report them to Gbao.[1838] He testified that in the areas around Makeni, fighters feared Gbao[1839] and that where RUF troops were harassing civilians, it was generally sufficient "to call any senior person's name, especially Gbao" to end the

[1832] Transcript of 17 June 2008, DAG-011, pp. 51-55; Transcript of 16 June 2008, DAG-047, p. 90.
[1833] Transcript of 17 June 2008, DAG-011 p. 66.
[1834] Transcript of 16 June 2008, DAG-047, pp. 80-81.
[1835] Transcript of 16 June 2008, DAG-047, pp. 80-81.
[1836] Transcript of 16 June 2008, DAG-018, pp. 13-17, 40-42.
[1837] Transcript of 16 June 2008, DAG-047, pp. 84-87
[1838] Transcript of 16 June 2008, DAG-047, pp. 85-86.
[1839] Transcript of 17 June 2008, DAG-047, p. 30.

harassment.[1840]

939. The Chamber further considers that with Bockarie's departure and Sankoh's return to Sierra Leone, Gbao's authority among the RUF troops was enhanced. Gbao and Sankoh were friends of longstanding.[1841] Gbao and Sankoh were in contact via radio during late 1999 and early 2000.[1842] The Chamber is of the view that Gbao's close personal relationship with Sankoh increased his prominence in the RUF command structure and therefore he acquired greater authority in his role and responsibilities.

940. In Makeni, Gbao was heavily involved in the disarmament of RUF fighters and he interacted with external delegations and NGOs in Makeni on behalf of the RUF.[1843] Gbao visited the DDR camps in Makeni between two and four times every week in the three months prior to May 2000 and was very well known to UNAMSIL personnel in the area.[1844] Gbao was one of the Commanders with whom the UNAMSIL Commanders regularly met to discuss disarmament.[1845] UNAMSIL peacekeepers knew him as the "chief security officer" for the RUF.[1846]

1.10. Conclusion on the RUF Organisation

941. From the foregoing analysis, the Chamber finds that throughout the Indictment period the RUF organisation operated pursuant to an organised hierarchical command structure with assignment, status and rank constituting recognised sources of seniority and authority. This command structure was enforced by an elaborate disciplinary system operated by the various RUF security units. The Chamber accordingly finds that the structure of the RUF permitted senior Commanders to exercise command and control over RUF troops within their areas of

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[1840] Transcript of 16 June 2008, DAG-047, p. 95. The Chamber notes that the witness subsequently stated, in response to a leading question put to him, that to his knowledge Gbao did not have the power to issue orders to members of the security units such as the G5, the IO and the MP: Transcript of 17 June 2008, DAG-047, pp. 4-5. The witness was a civilian and he admitted that he had very little direct interaction with Gbao: Transcript of 17 June 2008, DAG-047, pp. 42-43. The Chamber therefore considers his observations of Gbao's interaction with soldiers to be of greater utility than his opinion as to the nature of the RUF command structure in Makeni.
[1841] Transcript of 23 October 2007, DIS-069, pp. 73-74 ; DIS-281, Transcript 12 November 2007, p. 45.
[1842] Exhibit 33, RUF Radio Log Book, p. 8759-8760, 8762, 8793; Exhibit 33, RUF Radio Log Book, p. 8826.
[1843] Transcript of 27 March 2006, TF1-174, pp. 100-101 (CS).
[1844] Transcript of 17 June 2008, DAG-011 pp. 60-63; Transcript of 19 June 2008, DAG-011, pp. 22, 24.
[1845] Transcript of 29 March 2006, Leonard Ngondi, p. 14.
[1846] Exhibit 109, Report on the RUF Rebel Attack on UNAMSIL Officers in Makeni Team Site, dated 27 November 2000, pp. 21015-21016.

responsibility. The Chamber will assess the ability of the Accused to exercise effective control over RUF fighters responsible for the commission of crimes throughout the Indictment period in its Responsibility findings below.

2. Findings on the General Requirements

2.1. Crimes Against Humanity (Article 2)

942. The Accused are charged with eight counts of crimes against humanity, comprising unlawful killings (Counts 3, 4 and 16), sexual violence (Counts 6 to 8), physical violence (Count 11) and enslavement (Count 13). The Prosecution alleges that these crimes against humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.[1847]

943. We recall that the general requirements for the proof of crimes against humanity are as follows:

(i) There must be an attack;

(ii) The attack must be widespread or systematic;

(iii) The attack must be directed against any civilian population;

(iv) The acts of the Accused must be part of the attack; and

(v) The Accused knew or had reason to know that his acts constitute part of a widespread or systematic attack directed against any civilian population.[1848]

2.1.1. Attack directed against the civilian population of Sierra Leone

944. In determining whether an attack was directed against the civilian population of Sierra Leone, the Chamber has taken into account the events recounted in our Factual Findings as well as reliable oral and documentary evidence in respect of all locations throughout Sierra Leone between 30 November 1996 and January 2002. The Chamber finds ample evidence that the AFRC/RUF waged an attack encompassing horrific violence and mistreatment against the civilian population of Sierra Leone, which evolved through three distinct stages within the

[1847] Indictment, para. 17.
[1848] *Supra* para. 76.

Indictment period.

945. The first stage dates from November 1996 until the formation of the AFRC/RUF Junta "government" in May 1997. The mistreatment of civilians was particularly frequent and endemic in Kailahun District, where the RUF forced them to labour on communal farms, mine diamonds and undergo military training and subjected women and young girls to rapes and 'forced marriages.'[1849]

946. The second stage, which comprised the period from May 1997 until the ECOMOG Intervention of February 1998, was characterised by the joint AFRC/RUF campaign to strengthen their "government" through brutal suppression of perceived opposition by killing and beating civilians, not only in the capital but throughout Districts including Bo, Kenema and Kailahun.[1850] The AFRC/RUF also increased "government" revenues and the personal wealth of individual Commanders through forced mining in Kenema and Kono Districts.[1851]

947. The third stage of the attack on the civilian population, from February 1998 until sometime in the end of January 2000, involved a series of large-scale concerted military actions undertaken by the AFRC/RUF in multiple locations throughout Sierra Leone, with the intensity of the violence shifting as the troops gained and lost control of various towns and Districts. The enslavement and 'forced marriages' of civilians in Kailahun District persisted as before, and these practices spread to Kono District, Bombali District, Koinadugu District, Freetown and the Western Area and Port Loko District as troops moved through these areas.

948. The existence and nature of the attack against the civilian population throughout the remainder of the Indictment period is pertinent only to Count 16 which charges the Accused with the unlawful killings of UNAMSIL personnel. The Chamber will accordingly address the general requirements for crimes against humanity separately in its Legal Findings for Counts 15 to 18 of the Indictment.

949. In relation to each of the three stages identified, the Chamber is cognisant that the

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[1849] See, for examples, Transcript of 29 November 2005, TF1-093, pp. 75, 77, 82, 85, 94-95, 100, 110 (CS); Transcript of 6 March 2006, TF1-113, p. 32; Transcript of 14 March 2006, TF1-330, p. 25 (CS); Transcript of 20 July 2006, TF1-371, pp. 34-37, 54 (CS). See also *infra* paras 1414-1443.

[1850] Exhibit 178, United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997, 30 January 1998", pp. 19582-19585, 1958-1959.

violence against civilians occurred in the context of military operations. Examples include the attacks on Tikonko in Bo District in June 1997, which were ostensibly to eradicate Kamajors but in which civilians were killed *en masse*,[1852] and the attempt to regain control of Freetown in January 1999.[1853] In this respect we recall that although an attack on a civilian population is distinct to an armed conflict, an attack on a civilian population may precede, outlast or continue through an armed conflict. The presence of combatants amongst the civilian population does not preclude the characterisation of the attack as directed against the civilian population.[1854]

950. Moreover, the Chamber is satisfied from the manner in which civilians were targeted during AFRC/RUF military operations, as well as the frequent commission of crimes against civilians such as amputations, mutilations and rapes serving no military objective, that the armed conflict in Sierra Leone did not detract from the existence of the attack directed against the civilian population. On the contrary, and in our view, the AFRC/RUF regarded the pursuance of these two causes as mutually reinforcing and the violence directed against civilians was a fundamental feature of their war effort, utilised amongst other purposes to punish those who provided support for the CDF/ECOMOG[1855] and to finance the purchase of arms and ammunition from slave labour.[1856]

951. The Chamber thus finds that attacks were directed against the civilian population of Sierra Leone from 30 November 1996 until at least the end of January 2000.

2.1.2. The attack must be widespread or systematic

952. The Chamber will analyse the nature of the attack in each of the three stages identified above.

[1851] Transcript of 25 July 2006, TF1-371, pp. 35-37

[1852] Transcript of 7 December 2005, TF1-004, pp. 75-76; Transcript of 8 December 2005, TF1-004, pp. 2-13.

[1853] *Supra* paras 1511-1522.

[1854] *Tadic* Trial Judgement, para. 638.

[1855] Transcript of 14 October 2004, George Johnson, pp. 131-133; Transcript of 27 January 2005, pp. 113-116, 125, 128. *See also* Exhibit 174, Human Rights Watch Report, "Getting Away with Murder, Mutilation and Rape", June 1999, p. 19378: "The rebels made little distinction between civilians and military targets. They repeatedly stated that they believed civilians should be punished for what they perceived to be their support for the existing government. Thus, the rebels waged war against the civilian population [...]".

[1856] Transcript of 19 January 2005, TF1-071, pp. 50-52; Transcript of 21 January 2005, TF1-071, p. 114.

2.1.2.1. November 1996 to May 1997

953. Throughout this period, the RUF inflicted violence on civilians in various locations throughout the country in the conduct of their war against the Government of Sierra Leone.[1857] Kailahun District, however, was an RUF stronghold from 1991 until sometime in 2001. The nature of the RUF's control over this part of Sierra Leone both necessitated and facilitated the establishment of institutions and systems to govern civilian life.

954. One of the principal functions of the RUF "G5 unit" in Kailahun District was the management of farms on which hundreds of civilians were forced to labour.[1858] The farms operated pursuant to a subscription system whereby prescribed quantities of produce were extorted from the civilians, who were forced to walk many miles to deliver the goods to RUF Headquarters.[1859] From 1995 until 2001, civilians were forced to work at gunpoint on farms owned by members of the RUF High Command including Bockarie, Sesay and Gbao.[1860] In addition, an unknown number of women and young girls were forced to "marry" RUF rebels[1861] and civilians were abducted and forced to act as porters, sexual slaves and fighters.[1862]

955. The mistreatment of civilians was accordingly a well organised and permanent feature of RUF operations, sanctioned at the highest levels. Organisation to this degree ensured that hundreds of civilians in locations across the District were victims of the RUF's policies and practices. On this basis the Chamber considers the attacks against the civilian population of Sierra Leone to be both widespread and systematic.

2.1.2.2. The Junta Period: May 1997 to February 1998

956. The RUF continued to compel hundreds of civilians to work on "government" farms in various locations in Kailahun District, including at the RUF headquarters in Buedu,

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[1857] *See* evidence of killings, rapes and mutilations of civilians by RUF forces in, *inter alia*, Kambia, Moyamba and Bombali Districts: Exhibit 181, NPWJ Conflict Mapping Report, 10 March 2004, p. 28.
[1858] Transcript of 10 November 2005, TF1-366, pp. 6-7; Transcript of 14 March 2006, TF1-330, pp. 27-29; Transcript of 4 October 2007, DIS-047, p. 38; Transcript of 3 June 2008, DAG-048, pp. 118-119.
[1859] Transcript of 10 March 2006, TF1-108, pp. 32-33.
[1860] Transcript of 10 November 2005, TF1-366, pp. 6-7; Transcript of 14 March 2006, TF1-330, pp. 27-29.
[1861] Transcript 29 July 2006, TF1-369, pp. 47-48 (CS).
[1862] Exhibit 178, United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997", 30 January 1998, p. 19589.

throughout the Junta period.[1863] Civilians were also targeted in violent attacks on towns in other Districts. AFRC/RUF rebels burnt houses to the ground, killed civilians including women and children, and looted non-military items such as money and clothes in Gerihun, Sembehun and Tikonko in Bo District.[1864] AFRC/RUF rebels also staged attacks on Panguma and Bumpe in Kenema District.[1865] The temporal and geographic proximity of the various attacks, and their similar *modus operandi*, with civilians raped and killed, houses razed to the ground and property looted, establishes that these were not isolated incidents but rather a central feature of a concerted campaign against civilians.

957. The Chamber finds that in addition to being widespread, the attack on the civilian population was systematic, as critical aspects such as forced mining, considered to be an essential source of revenue, were planned centrally from Freetown. Senior members of the AFRC Supreme Council including SAJ Musa, Zagalo and Gullit were entrusted with overseeing mining operations.[1866] The "government" mining system saw hundreds of civilians forced to mine at gunpoint at Cyborg Pit in Tongo Field in Kenema District,[1867] with massive numbers of civilians killed.[1868]

958. The repetitive targeting of certain groups is further evidence of the systematic nature of the attack. The Junta "government" brutally suppressed opposition, be it actual or merely suspected. Civilians alleged to be Kamajors were savagely beaten and executed in locations in Kenema, Kono and Kailahun Districts. The violence followed a familiar pattern, characterised by arrests of multiple victims who were often prominent community members, sham "investigations" and then public executions.[1869] Church workers, journalists and students were

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[1863] Transcript of 28 April 2005, TF1-114, pp. 57-61 (CS); Transcript of 10 November 2005, TF1-366, pp. 6-7; Transcript of 21 November 2005, TF1-045, p. 64; Transcript of 14 March 2006, TF1-330, pp. 27-29.
[1864] Transcript of 30 November 2005, TF1-054, pp. 34-35 (CS); Transcript of 7 December 2005, TF1-004, p. 65, 71-74; Transcript of 8 December 2005, TF1-004, pp. 2-14; Transcript of 8 December 2005, TF1-008, p. 35; Transcript of 21 April 2008, Hassan Deko Salu, pp. 76-77.
[1865] Transcript of 29 April 2005, TF1-060 pp. 66-67, 92-94 (CS).
[1866] Transcript of 20 July 2006, TF1-371, pp. 34-35 (CS); Defence Request for Agreement of Facts, 8 March 2007, Fact 45, *citing* AFRC Prosecution Closing Brief, para. 526.
[1867] Transcript of 5 July 2005, TF1-035 pp. 80-81; Transcript of 10 July 2006, TF1-041, pp. 19-20; Transcript of 20 July 2006, TF1-371, p. 52 (CS).
[1868] Transcript of 5 July 2005, TF1-035 p. 92.
[1869] *Supra* paras 1066-1071, 1146, 1387-1397. Exhibit 176, Amnesty International, "Sierra Leone 1998 –a year of atrocities against civilians", p. 19496.

also frequently targeted suspected members of the opposition.[1870]

2.1.2.3. The ECOMOG Intervention to end January 2000

959. In addition to ongoing forced labour in Kenema and Kailahun Districts, the attack against the civilian population of Sierra Leone continued throughout other parts of the country between February 1998 and January 2000. In Kono District alone, civilians were attacked in locations including Tombodu,[1871] Koidu,[1872] Yardu,[1873] Wendedu,[1874] Sawao,[1875] Kayima,[1876] Bumpeh[1877] and Kissi Town.[1878] During September 1998, UNOMSIL received reports of attacks on 20 villages in a single week in four small chiefdoms in the north-west of the country.[1879] Mass executions of civilians suspected to be Kamajors took place in Kailahun.[1880] The widespread commission of brutal rapes during this period is well-documented.[1881]

960. During the January 1999 invasion of Freetown, rebel troops were ordered by their leaders to burn public and private property and to kill and maim civilians.[1882] It is estimated that thousands of civilians were killed; mutilations, rapes and abductions were rife; and entire neighbourhoods were burned to the ground, often with civilians locked inside the burning

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[1870] Exhibit 174, Human Rights Watch Report, "Getting Away with Murder, Mutilation and Rape", June 1999, p. 19378; Exhibit 176, Amnesty International, "Sierra Leone 1998 –a year of atrocities against civilians", p. 19492-19493; Exhibit 178, United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997, 30 January 1998, pp. 19582, 19586-19587.

[1871] Transcript of 21 October 2004, TF1-197, pp 89-90; Transcript of 2 February 2005, TF1-012, pp. 19-22; Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 14-15.

[1872] Transcript of 11 April 2005, TF1-141, pp. 82-85.

[1873] Transcript of 22 October 2004, TF1-197, pp. 7-14.

[1874] Transcript of 22 October 2004, TF1-078, pp. 81-84; Transcript of 21 January 2005, TF1-071, p. 57; Transcript of 31 January 2005, TF1-015, pp. 64-65; Transcript of 12 November 2007, DIS-281, p. 24.

[1875] Transcript of 1 February 2005, TF1-195, pp. 22-24.

[1876] Transcript of 12 July 2004, TF1-074, pp. 7-8 and 13. *See also* Exhibit 2, filed under seal, which contains a photograph of the witness that shows the markings.

[1877] Transcript of 1 February 2005, TF1-218, pp. 86-89.

[1878] Transcript of 21 October 2004, TF1-016, pp. 14-18.

[1879] Exhibit 160, Second Progress Report of the Secretary General on the United Nations Observer Mission in Sierra Leone, 16 October 1998, p. 19135.

[1880] *See*, for example, Transcript of 25 November 2005, TF1-045, p. 40; Transcript of 2 March 2006, TF1-113, pp. 56-58.

[1881] Exhibit 175, Human Rights Watch Report, "Sowing Terror, Atrocities against civilians in Sierra Leone", July 1998, pp. 19450-19453.

[1882] Transcript of 21 July 2005, TF1-360, pp. 34-35.

houses.[1883]

961. Moreover, the Chamber is satisfied that the widespread violence against civilians was organised. The evidence contains multiple examples of operations staged by AFRC/RUF forces pursuant to pre-conceived plans or policies which were given particular names and directed at specific objectives. "Operation Pay Yourself", which commenced in February 1998 in Masiaka and Makeni but quickly spread to locations including Koidu, was instituted by AFRC/RUF Commanders who, unable to pay their troops, encouraged the looting of civilian property.[1884] The Fiti-Fata mission in August 1998, and the RUF attack to recaputre Kono District in December 1998 saw numerous atrocities committed against civilians.[1885]

2.1.2.4. Conclusion

962. For the foregoing reasons, and on the basis of the totality of reliable evidence before the Chamber, we find that the attacks directed against the civilian population of Sierra Leone from November 1996 until at least January 2000 were both widespread and systematic.

963. Unless otherwise stated in our Factual Findings, the Chamber is satisfied that the perpetrators of the crimes recounted therein were part of the widespread or systematic attack against the civilian population and that the perpetrators were aware of this fact and acted with the requisite intent.

2.2. War Crimes (Article 3)

964. The Accused are charged with eight counts of war crimes, comprising acts of terrorism and collective punishment (Counts 1 to 2), unlawful killings (Counts 5 and 17), outrages upon personal dignity (Count 9), mutilations (Count 10), pillage (Count 14) and the taking of hostages (Count 18). The Prosecution alleges that a state of armed conflict existed in Sierra Leone at all times relevant to the Indictment and a nexus existed between this conflict and the

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[1883] Exhibit 174, Human Rights Watch Report, "Getting Away with Murder, Mutilation and Rape", June 1999, pp. 19378, 19397, 19401; Exhibit 181, NPWJ Conflict Mapping Report, 10 March 2004, p. 36.
[1884] Transcript of 19 January 2005, TF1-071, p. 28; Exhibit 175, Human Rights Watch Report, "Sowing Terror, Atrocities against civilians in Sierra Leone", July 1998, p. 19456; Exhibit 181, NPWJ Conflict Mapping Report, 10 March 2004, p. 34; Transcript of 22 February 2008, Witness DIS-009, pp. 70-71.
[1885] Transcript of 28 July 2005, TF1-036, p. 61; Transcript of 21 November 2005, TF1-045, p. 75; Transcript of 21 July 2006, TF1-371, p. 45 (CS); Transcript of 14 April 2008, Morris Kallon, pp. 62-63. *See also* Transcript of 8 November 2005, TF1-366, pp. 78-82 (CS); Transcript of 16 May 2007, Issa Sesay, p. 14.

war crimes charged.[1886]

965. We recall that the general requirements for the proof of war crimes are as follows:

(i) An armed conflict existed at the time of the alleged violation of Common Article 3 or Additional Protocol II;

(ii) There existed a nexus between the alleged violation and the armed conflict;

(iii) The victim was a person not taking direct part in the hostilities at the time of the alleged violation; and

(iv) The Accused knew or had reason to know that the person was not taking a direct part in the hostilities at the time of the act or omission.[1887]

966. However, the Prosecution has charged three counts found solely in Additional Protocol II: collective punishment, acts of terrorism and pillage.[1888] The Chamber thus considers that the Prosecution must also prove the elements of Article 1 of Additional Protocol II, namely that the dissident armed forces or other organised groups participating in the conflict:

(i) Were under responsible command;

(ii) Were able to exercise such control over a part of their territory as to enable them to carry out sustained and concerted military operations; and

(iii) Were able to implement Additional Protocol II.[1889]

967. Since Additional Protocol II applies only in situations of non-international armed conflict, the Chamber also finds it necessary to determine the nature of the conflict in Sierra Leone.

968. The Chamber has set out below its findings pertaining to the existence and nature of the armed conflict. Unless otherwise stated in our Factual Findings, the Chamber is satisfied that a nexus existed between the alleged violation and the armed conflict, that the victim was not taking direct part in hostilities at the time and that the perpetrator knew or had to reason to know this.

[1886] Indictment, paras 5-6.
[1887] *Supra* para. 93.
[1888] Additional Protocol II, Art. 4(b), 4(d), 4(g) and 13(2).
[1889] *Supra* para. 97.

2.2.1. The state of Armed Conflict in Sierra Leone

969. The Chamber has taken judicial notice of the fact that the "conflict in Sierra Leone occurred from March 1991 until January 2002."[1890] This period covers all crimes charged in the Indictment. The Chamber therefore rejects the submission of the Kallon Defence that no armed conflict existed at the time of the alleged attacks on UNAMSIL personnel (Counts 15 to 18) from about 15 May 2000 until about 15 September 2000.[1891]

970. The Chamber further took judicial notice of the fact that the RUF began "organised armed operations" in March 1991 and that the RUF, AFRC and CDF were involved in the armed conflict in Sierra Leone.[1892]

2.2.2. Nature of the Sierra Leone conflict

971. Pursuant to Common Article 2 of the 1949 Geneva Conventions, an international armed conflict exists whenever there is resort to armed force between two or more High Contracting Parties, which in this context refers exclusively to States.[1893]

972. As the AFRC and RUF were internal insurgent groups, the conflict in Sierra Leone does not *prima facie* satisfy the test in Common Article 2. However, consistent with the jurisprudence of our sister tribunal the ICTY, we hold that a non-international conflict may become international if "another State intervenes in that conflict through its troops, or alternatively if [...] some of the participants in the internal armed conflict act on behalf of that other State." [1894]

973. The Sesay and Kallon Defence submit that the involvement of ECOMOG, a military force comprising soldiers from various West African States fighting under a mandate from ECOWAS, transformed the armed conflict into an international one.[1895] We do not agree. As ECOMOG fought against the AFRC/RUF at the behest of the internationally recognised Kabbah Government, its intervention cannot be classed as recourse to armed force between

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[1890] Consequential Order on Judicial Notice, Annex I, Fact A.
[1891] Kallon Final Trial Brief, paras 1340-1350.
[1892] Consequential Order on Judicial Notice, Annex I, Facts H and J.
[1893] *See also Tadic* Appeal Decision on Jurisdiction, para. 70; Dietrich Schindler, "The Different Types of Armed Conflict According to the Geneva Conventions and Protocols" (1997) 163 *Recueil des cours* 131.
[1894] *Tadic* Appeal Judgement, para. 84.

two States.[1896]

974. Relying on the second requirement for internationalisation, the Kallon and Sesay Defence submit that the support extended to the RUF by Charles Taylor was such that the RUF were in fact acting on behalf of, or belonging to, the Republic of Liberia.[1897] The Chamber observes that the Defence did not at any stage adduce evidence to establish this theory.

975. The Chamber endorses the principle that an organised armed group may be said to be acting on behalf of another State when that State exercises overall control over the group.[1898] In order to satisfy this test, it must be shown that the Republic of Liberia:

(i) Provided financial and training assistance, military equipment and operational support, and

(ii) Participated in the organisation, co-ordination or planning of military operations.[1899]

976. Prior to July 1997, Taylor's National Patriotic Front for Liberia (NPFL) was itself a rebel organisation and did not represent the Republic of Liberia. Although evidence was adduced demonstrating long-standing links between Liberians including Charles Taylor and the RUF,[1900] this evidence was not sufficiently comprehensive nor compelling for the Chamber to determine the precise nature and extent of the relationship after July 1997. In our opinion, the evidence does not establish beyond reasonable doubt that Taylors interactions with the RUF leadership were such that he was in a position to exercise overall control over the RUF as an organisation.

[1895] Kallon Final Trial Brief, paras 50-51. The Sesay Defence argue that an internal and international conflict co-existed in Sierra Leone and therefore characterised the armed conflict as "mixed": Sesay Final Trial Brief, para. 31.
[1896] For the same reasons, we reject the argument by the Kallon Defence that the involvement of UNAMSIL and the private security company Executive Outcomes internationalises the armed conflict: *see* Kallon Final Trial Brief, para. 50.
[1897] Kallon Final Trial Brief, para. 50; Sesay Final Trial Brief, para. 31; Transcript of 4 August 2008, Closing Arguments from Counsel for Sesay, p. 10.
[1898] *Tadic* Appeal Judgement, paras 93-95.
[1899] *Tadic* Appeal Judgement, para. 131.
[1900] *See*, for example, evidence of joint military training in Libya: Transcript of 7 October 2004, General John Tarnue, p. 99; Transcript of 18 July 2005, TF1-361, p. 119 (CS); Transcript of 19 July 2005, TF1-360, pp. 97-98 (CS); Transcript of 27 July 2005, TF1-036, pp. 26-27 (CS); Transcript of 8 November 2005, TF1-366, p. 84 (CS); Transcript of 24 November 2005, TF1-045, p. 88 (CS); Transcript of 3 April 2006, TF1-168, p. 10 (CS).

977. The Chamber therefore finds that the armed conflict in Sierra Leone was of a non-international character.[1901]

2.2.3. General Requirements of Additional Protocol II

978. On the basis of our Factual Findings pertaining to the command structure of the RUF, the Chamber is satisfied that the members of the RUF were under responsible command and that the RUF had the capacity to implement the provisions of Additional Protocol II on the territory that they seized and controlled.

979. We further find that the control exercised by the RUF over Kailahun District for the duration of the armed conflict was critical to its capacity to wage war. The RUF was headquartered in Kailahun District first at Giema and then at Buedu[1902] and from there the RUF High Command communicated with troops situated in other areas of Sierra Leone.[1903] An armoury and airfield were were established in Kailahun for the production and distribution of materials including arms and ammunitions.[1904] The RUF relied on its extensive network of "government" farms in Kailahun District to provide food for its troops.[1905]

980. The RUF's control over Kailahun District enabled it to carry out sustained and concerted military operations, at times jointly with AFRC forces. Major operations include the joint AFRC/RUF attack on Koidu Town in February 1998;[1906] the Fiti Fata Operation in August 1998;[1907] and the attacks on Makeni and Koidu in December 1998.[1908]

981. The Chamber therefore finds that the requirements of Additional Protocol II have been proved beyond reasonable doubt. We recall that an armed conflict satisfying this higher

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[1901] Having found that the conflict is of non-international character, the Chamber has opted to refer to persons directly participating in hostilities as 'fighters'. *See also* International Institute of Humanitarian Law, *The Manual on the Law of Non-International Armed Conflict with Commentary*, (San Remo: IIHL, 2006), p. 4.
[1902] Transcript of 19 April 2005, TF1-141, pp. 58-59; Transcript of 31 March 2006, TF1-168, p. 60 (CS); Transcript of 3 June 2008, DAG-048, p. 101.
[1903] Transcript of 21 January 2005, TF1-071, p. 8; Transcript of 20 July 2005, TF1-360, p. 18 (CS); Transcript of 10 May 2007, Issa Sesay, p. 72.
[1904] Transcript of 29 October 2007, DIS-188, pp. 57-58 (CS); Transcript of 3 June 2008, DAG-048, pp. 103-104.
[1905] Transcript of 3 June 2008, DAG-048, p. 115.
[1906] Transcript of 9 May 2007, Issa Sesay, pp. 36-38. *See also* Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, p. 3; Transcript of 8 November 2005, TF1-366, pp. 5-7 (CS).
[1907] Transcript of 14 April 2008, Morris Kallon, pp. 62-63. *See also* Transcript of 8 November 2005, TF1-366, pp. 78-82 (CS); Transcript of 16 May 2007, Issa Sesay, p. 14.

threshold would necessarily constitute an armed conflict under Common Article 3.[1909]

2.2.4. Law of occupation

982. The Sesay Defence submitted that the level of control exercised by the RUF over Kailahun District effectively made the RUF an occupying power under International Humanitarian Law.[1910] The Chamber considers this submission to be misconceived. The rights and duties of occupying powers, as codified in the 1907 Hague Convention and the Fourth Geneva Convention, apply only in international armed conflicts.[1911] This is also the case at Customary International Law, which defines an occupying power as a military force present on the territory of another State as a result of an intervention.[1912]

983. The Sesay Defence contended that limiting the applicability of the law of occupation to international armed conflicts deprives civilian populations under the control of internal insurgent groups the protections they would be afforded if they were under the occupation of a foreign power.[1913] However, as is evident from its general requirements, Additional Protocol II was designed to regulate situations where insurgent groups exercise control over part of the territory of a State.[1914] Common Article 3, which applies in all circumstances in all armed conflicts and is accepted as safeguarding the elementary considerations of humanity,[1915] continues to apply in times of occupation.[1916]

[1908] Transcript of 9 November 2005, TF1-366, pp. 2-12; Transcript of 17 May 2007, Issa Sesay, pp. 86-89; Transcript of 9 November 2007, DIS-281, pp. 71-72; Transcript of 12 February 2008, DIS 127, pp. 61-64.

[1909] *Supra* para. 98.

[1910] Sesay Defence Final Trial Brief, para. 32 *ff*.

[1911] Section III (Art. 47-58) of the Fourth Geneva Convention and Section III (Art. 42-56) of the Hague Regulations set out the law pertaining to occupied territories. In both treaties, Section III applies only in conflicts between two or more Parties to these Conventions: *see* Art. 2 of the Fourth Geneva Convention and Art. 2 of the Hague Regulations. *See also* Theodor Meron, "War Crimes in Yugoslavia and the Development of International Law" (1994) 88 AJIL 78 at pp. 78, 80.

[1912] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, (2005) ICJ General List No. 116, 19 December 2005, paras 172-173; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, 2004 ICJ Reports 136, 9 July 2004, para. 95.

[1913] Closing Arguments, Counsel for Sesay, 4 August 2008, pp. 101-106.

[1914] *See* Art. 1 of Additional Protocol II: "This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 [...] shall apply to all armed conflicts [...] which take place in the territory of a High Contracting Party *between its armed forces and dissident armed forces or other organized armed groups* which, under responsible command, *exercise such control over a part of its territory* as to enable them to carry out sustained and concerted military operations and to implement this Protocol." [emphasis added].

[1915] *Tadic* Appeal Decision on Jurisdiction, para. 102, referring to *Military and Paramilitary Activities in and against Nicaragua*, para. 218.

[1916] Geneva Convention IV, Art. 48.

984. The core of the Sesay Defence's arguments pertaining to the law of occupation concern the permissibility of forced civilian labour and the right to requisition private and public property in occupied territories.[1917]

985. Even assuming, *arguendo*, that the law of occupation applied, we recall that enslavement is a crime against humanity. The rights of an occupying power under international humanitarian law are therefore no answer to the charges in Count 13. Nonetheless, we consider it important to draw attention to the basic conditions regulating the right of an occupying power to compel protected persons to work. Firstly, an occupying power may only force civilians to labour in order to secure the basic needs and living conditions of the civilian population or the needs of the occupying army. Further conditions include that the workers must be over 18 years of age, the workers must be paid a fair wage and the work must be proportionate to their physical and intellectual capacities.[1918]

986. In our opinion, the use of forced labour by the RUF in Kailahun District violated each of these conditions. We have found that the RUF forced civilians of all ages to work without compensation and that if workers were unable to perform their assigned tasks they were liable to be beaten or shot.[1919] In addition, while the RUF did provide the civilian population with certain basic facilities and services, it also relied on forced labour to facilitate its war effort at the expense of providing for the needs of the civilian population.[1920] The Chamber thus considers the use of forced labour by the RUF to be entirely inconsistent with the rights of an occupying power.

987. The Sesay Defence also advanced the argument that the RUF enjoyed the rights of an occupying power to seize or requisition private and public property for the needs of the occupying army.[1921] While reiterating our finding that the law of occupation did not apply to the RUF's reign in Kailahun District, we observe that these rights are strictly limited. In particular, requisitions in kind must be in proportion to the resources of the country and must be paid for insofar as possible in cash, or alternatively a receipt must be given and the amount

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[1917] Sesay Defence Final Trial Brief, paras 47-48, 243-253.
[1918] Geneva Convention IV, Art. 51.
[1919] *See*, for example, Transcript of 11 April 2005, TF1-141, pp. 92-93.
[1920] *Infra* paras 1478-1482.
[1921] Sesay Defence Final Trial Brief, paras 44-46.

owed paid as soon as possible.[1922] It is our opinion that the overwhelming evidence in this case demonstrates that looting was for the personal benefit of individual RUF fighters or their Commanders. Civilians were shot for refusing to surrender palm wine and cassette players.[1923] The scale of items appropriated was such that civilians were abducted to assist the rebels and compelled to transport the stolen goods.[1924] Accordingly, the Chamber finds the argument of the Sesay Defence entirely untenable.

988. The Chamber concludes that the rights and duties of occupying powers under International Humanitarian Law did not regulate the conduct of the RUF in Kailahun District or any other district during the non-international armed conflict that existed in Sierra Leone.

2.3. Article 4: Other Serious Violations of International Humanitarian Law

989. The Chamber has noted that the following general requirements must be established to prove an other serious violation of international humanitarian law:

(i) An armed conflict existed at the time of the alleged offence; and

(ii) There existed a nexus between the alleged offence and the armed conflict.

990. The Chamber recalls that an armed conflict existed in Sierra Leone at the time of the alleged offences.[1925] Unless otherwise stated in our Factual Findings on Counts 13 and 15 to 18, the Chamber is satisfied that a nexus existed between the acts charged and the armed conflict and that the perpetrators knew that the victims were not taking a direct part in hostilities.

3. Crimes in Bo District

3.1. Factual Findings on the Crimes in Bo District

3.1.1. Background to Bo District

991. Bo District is located in the south of Sierra Leone. Its capital is Bo, which is often

[1922] Hague Regulations, 1907, Art. 52.
[1923] Transcript of 18 November 2005, TF1-045 pp. 76-77 (CS); Transcript of 8 December 2005, TF1-008, pp. 36
[1924] Transcript of 20 July 2004, TF1-199, pp. 77-78; Transcript of 13 January 2005, TF1-304, pp. 2-17; Transcript of 6 April 2005, TF1-263, pp. 5-9.
[1925] Consequential Order on Judicial Notice, Annex I, Fact A.

called Bo Town in order to distinguish the two. Other towns in Bo District include Tikonko, Sembehun and Gerihun.[1926]

992. At the time of the AFRC coup on 25 May 1997, SLA soldiers were deployed in Bo Town, allowing the AFRC to immediately form a strong base there.[1927] RUF fighters had been based in Tikonko since 1994 and following the coup they joined the AFRC in Bo Town.[1928] After the coup the Kamajors retreated from Bo District to CDF strongholds in Pujehun and Bonthe District.[1929] Although hostilities between CDF and AFRC/RUF forces in Bo District continued, the clashes were of a low intensity due to the limited Kamajor fighting strength there.[1930]

3.1.2. Tikonko

3.1.2.1. First Attack on Tikonko

993. At the end of May 1997, rumours abounded that the AFRC/RUF Junta suspected that Kamajors were hiding in Tikonko and that the AFRC/RUF were planning to attack the town and its civilians.[1931]

994. The first attack on Tikonko by the AFRC/RUF forces occurred in the first few days of June 1997. The inhabitants of Tikonko fled and went into hiding in the surrounding bush. From there, they could see that buildings were being burned in the town.[1932] TF1-004, who was among those hiding in the bush, returned to the town following the withdrawal of the AFRC/RUF. He found that one of his houses had been completely destroyed by fire, some of his belongings were missing and those that remained were scattered in the street.[1933] During this first attack, the AFRC/RUF forces did not discover any Kamajors hiding in Tikonko.[1934]

[1926] Tikonko is the headquarter town of Tikonko Chiefdom and is located seven miles from Bo: Transcript of 8 December 2005, TF1-004, pp. 13, 18; Transcript of 7 December 2005, TF1-004, p. 67; Sembehun is also in the Tikonko Chiefdom, near Bo; Transcript of 8 December 2005, TF1-008, pp. 33; Gerihun is located 12 miles from Bo Town on the highway between Bo and Kenema; Transcript of 21 April 2008, Hassan Deko Salu, p. 48.
[1927] Exhibit 181, NPWJ, Conflict Mapping Report, p. 24245.
[1928] Transcript of 7 December 2005, TF1-004, pp. 62-63, 70-71; Transcript of 21 April 2008, Hassan Deko Salu, pp. 48-49.
[1929] Exhibit 181, NPWJ Conflict Mapping Report, p. 24245.
[1930] Transcript of 8 December 2005, TF1-004, pp. 16-17, 19-20, 30.
[1931] Transcript of 7 December 2005, TF1-004, pp. 63-64.
[1932] Transcript of 7 December 2005, TF1-004, p. 65.
[1933] Transcript of 7 December 2005, TF1-004, p. 65.
[1934] Transcript of 7 December 2005, TF1-004, p. 66.

3.1.2.2. Second Attack on Tikonko

995. TF1-004 was at the Tikonko junction on 15 June 1997 when the second attack on Tikonko began.[1935] There were many civilians at the junction, as well as two persons whom TF1-004 identified from their attire as Kamajors, as one was clothed in a "ronko"[1936] and carried a horn, and the other carried a gun. A man named Amadu Koroma came running from the direction of Bo and said that fighters were on their way to Tikonko.[1937] Another unidentified man arrived with his wife and children from Bumpe and said that fighters were killing people and civilians were fleeing the town.[1938]

996. At that point, a group of heavily armed fighters wearing military uniforms arrived at the junction from the direction of Bo.[1939] The fighters passed through the junction and headed towards Tikonko.[1940] A second group of fighters arrived immediately after the first, followed by a vehicle mounted with an anti-aircraft gun. These fighters were discharging their weapons as they arrived at the junction.[1941] They wore red bandanas around their foreheads and some were clothed in short trousers.[1942]

997. Fighters killed one of the Kamajors with a shot to the forehead fired from the anti-aircraft gun.[1943] The second Kamajor was killed by the fighters when shot in the hand and in the chest.[1944] The man from Bumpe and his wife and children were also shot and, in the words of TF1-004, they "fell like leaves."[1945] The fighters also killed some of the other people at the junction.[1946]

998. TF1-004 hid in the bush beside the roadside of the junction.[1947] He determined from the fighters' shouts and the smoke coming from the direction of Tikonko that the fighters had

[1935] Transcript of 7 December 2005, TF1-004, pp. 66-67; Transcript of 8 December 2005, TF1-004, p. 14.
[1936] Transcript of 7 December 2005, TF1-004, p. 68. Ronkos are traditional dresses commonly worn by Kamajors during the war.
[1937] Transcript of 7 December 2005, TF1-004, p. 67.
[1938] Transcript of 7 December 2005, TF1-004, pp. 68-69.
[1939] Transcript of 7 December 2005, TF1-004, pp. 69-71.
[1940] Transcript of 7 December 2005, TF1-004, p. 71.
[1941] Transcript of 7 December 2005, TF1-004, p. 71.
[1942] Transcript of 7 December 2005, TF1-004, p. 76-77.
[1943] Transcript of 7 December 2005, TF1-004, p. 71.
[1944] Transcript of 7 December 2005, TF1-004, p. 73.
[1945] Transcript of 7 December 2005, TF1-004, p. 71.
[1946] Transcript of 7 December 2005, TF1-004, pp. 73-74.
[1947] Transcript of 7 December 2005, TF1-004, p. 74.

left the junction and entered that town.[1948] TF1-004 had been hiding in the bush for roughly two hours when he heard a military vehicle replete with fighters who were singing "those people would know us today" pass the junction in the direction of Bo.[1949]

999. After the departure of the fighters, TF1-004 emerged from the bush and returned to the junction.[1950] He saw items of property scattered around and two full bags of grain or rice on the road.[1951] He also saw more than ten corpses with gunshot wounds, mostly civilians, lying on the ground at the junction and on the route to Bo Town. There were also victims with gunshot wounds still alive but who appeared to be near death.[1952] Many other corpses lay along the road from the junction into Tikonko.[1953]

1000. When TF1-004 entered Tikonko, he heard shouting coming from a house adjacent to his own. Upon entering the house, he saw a woman lying on the ground shouting for water. She had been eviscerated, and had been placed next to a line of ten corpses each of which evidenced gunshot wounds to their backs or heads. In another room in the same house, TF1-004 observed two more corpses, one of which was that of a man who had been shot in the back of the head and the other was that of a child who had been shot in the chest. In a third room, there were two more bodies that had also been shot in the head and chest.[1954]

1001. When he left the house, TF1-004 saw the corpses of two men in the street. One man had been shot in his side. The second man, who was known to TF1-004, had been shot in his chest and his head had been severed and his legs broken.[1955]

1002. TF1-004 proceeded to his two other houses, one of which had already suffered damage from fire during the first attack and was again on fire and burning with such intensity that it was impossible to enter into the property. His third house, which had been under construction and from which the doors had been removed and the zinc roofing material perforated, was completely destroyed. At the rear of this property, he discovered his upturned suitcase emptied

[1948] Transcript of 7 December 2005, TF1-004, p. 74-75.
[1949] Transcript of 7 December 2005, TF1-004, pp. 75-76.
[1950] Transcript of 8 December 2005, TF1-004, p. 2.
[1951] Transcript of 8 December 2005, TF1-004, pp. 2-3.
[1952] Transcript of 8 December 2005, TF1-004, p. 3.
[1953] Transcript of 8 December 2005, TF1-004, p. 4.
[1954] Transcript of 8 December 2005, TF1-004, pp. 4-6.
[1955] Transcript of 8 December 2005, TF1-004, p. 6.

of his clothing which had been set alight.[1956]

1003. While searching for his family in Tikonko, TF1-004 noticed many corpses. In one house, he found a female corpse with an open stomach wound lying on top of another dead body.[1957] He also noticed a number of corpses strewn over the ground at the DEC Primary School.[1958]

1004. For approximately five days following the attack, most of the residents of Tikonko remained in hiding in the bush, eventually emerging to bury the dead that were laying in the streets and in the houses of the town.[1959] TF1-004 estimated that together, he and the other townspeople buried over 200 bodies after the attack:

> Those on which we placed earth [...] there could be over 200, because we didn't bury them on the same day [...] that was some kind of a job for us, just so that we would bury those people. Had we not buried those people at the junction, no vehicle would have been able to ply that road, because they were strewn all over the place. So we were burying them every day.[1960]

1005. Nearly all of the houses in Tikonko, of which TF1-004 estimated there were up to 500, were burned during the attack. The fires in some of the houses burned for two or three days after the attack.[1961]

3.1.3. Attack on Sembehun

1006. In June 1997, a group of solders travelling by van entered Sembehun from the direction of Bo.[1962] Their leader introduced himself as Bockarie and identified himself as a member of the RUF. The men were wearing combat trousers and civilian shirts and were armed with small firearms and machine guns.[1963]

1007. Bockarie and his subordinates first entered the house of Ibrahim Kamara, the section

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[1956] Transcript of 8 December 2005, TF1-004, p. 7.
[1957] Transcript of 8 December 2005, TF1-004, p. 8.
[1958] Transcript of 8 December 2005, TF1-004, pp. 8-9.
[1959] Transcript of 8 December 2005, TF1-004, p. 10.
[1960] Transcript of 8 December 2005, TF1-004, p. 13.
[1961] Transcript of 8 December 2005, TF1-004, pp. 13-14.
[1962] Transcript of 8 December 2005, TF1-008, pp. 33-35.
[1963] Transcript of 8 December 2005, TF1-008, pp. 33, 35, 45, 51. The witness refers to Bockarie as 'Mosquito' throughout.

chief.[1964] Bockarie's men forced Kamara to lay prone on the ground. Bockarie then stole about Le 800.000 from Kamara, and addressed him as a "fucking civilian."[1965] The group then proceeded to the house of Tommy Bockarie. Tommy Bockarie owned a cassette player which the men told him to hand over. When he refused to do so, they shot him dead.[1966]

1008. Another person, named Sheriff, was found by TF1-008 laying in a pool of blood in the bush outside of the town. Sheriff told TF1-008 that he had been shot in the stomach and the foot by Bockarie's men. TF1-008 attempted to push Sheriff's intestines back into his stomach and bind him with cloth. As Sheriff was unable to stand, TF1-008 carried him to the side of the road. Later, he helped Sheriff to get to the town so that he could receive treatment for his wounds.[1967]

1009. During the attack on Sembehun, the troops discharged their weapons indiscriminately and set houses on fire, of which approximately thirty were burned to the ground.[1968]

3.1.4. Attack on Gerihun

1010. On the afternoon of 26 June 1997, fighters coming from the direction of Bo attacked the Kamajor base at Nyandehun. The fighters were well-armed and Hassan Deko Salu, the Kamajor Battalion Commander, recognised them as AFRC fighters. Among them he recognised Boysie Palmer, Akim, Lieutenant Kuyateh and Corporal McCarthy.[1969] After overpowering the Kamajors, the fighters proceeded to Gerihun.[1970]

1011. TF1-054 was in Gerihun at about 4:00pm on 26 June 1997 when he heard gunshots. He observed other people in the town running and searching for places to hide. TF1-054 went to Paramount Chief Demby's residence and informed him that Gerihun was under attack. The Paramount Chief, who was in his bedroom, advised him to hide. Another civilian who was present, Pa Sumaila, hid in the toilet while TF1-054 concealed himself in the attic next to a

[1964] Ibrahim Kamara was a Section Chief of Sembehun 17: Transcript of 8 December 2005, TF1-008, p. 35.
[1965] Transcript of 8 December 2005, TF1-008, p. 35.
[1966] Transcript of 8 December 2005, TF1-008, pp. 36.
[1967] Transcript of 8 December 2005, TF1-008, pp. 37-38, 44.
[1968] Transcript of 8 December 2005, TF1-004, p. 36.
[1969] Transcript of 21 April 2008, Hassan Deko Salu, pp. 59, 77.
[1970] Transcript of 21 April 2008, Hassan Deko Salu, pp. 76-77.

window overlooking the entrance to the Paramount Chief's house.[1971]

1012. From this vantage point, TF1-054 watched as a group of people including men in military uniforms entered the house. Among the fighters were Boysie Palmer, AF Kamara and ABK. TF1-054 moved to a window at the rear of the house, from where he saw the men enter the Paramount Chief's bedroom. He heard a man, whose voice he recognised as AF Kamara, ordering that the Paramount Chief be shot.[1972] TF1-054 heard a shot, and then Boysie Palmer stated "he has not given up the ghost yet [...] stab him."[1973] TF1-054 heard Paramount Chief Demby cry out.[1974]

1013. TF1-054 ran from the house and was pursued by fighters into the bush, where he hid until the fighters abandoned their search and retreated back to the house.[1975]

1014. The fighters killed numerous civilians in Gerihun and looted the town.[1976] The morning after the attack, TF1-054 returned to the house of Paramount Chief Demby. On the way, he observed five corpses in civilian clothing near the market.[1977] He found the Paramount Chief dead in his bed and the corpse of Pa Sumaila in the toilet.[1978] Several other witnesses, including Kallon, confirmed that Paramount Chief Demby was killed by AFRC fighters.[1979]

3.2. Legal Findings on the Crimes in Bo District

1015. The Prosecution alleges that the AFRC/RUF committed the crimes of unlawful killings (Counts 3 to 5) and pillage (Count 14) between about 1 June 1997 and about 30 June 1997 in various locations throughout Bo District. The Prosecution further alleges that these crimes constitute acts of terrorism and collective punishment (Counts 1 to 2).

1016. The Chamber is satisfied that each of the acts described in the following paragraph was

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[1971] Transcript of 30 November 2005, TF1-054, pp. 29-31(CS).
[1972] Transcript of 30 November 2005, TF1-054, pp. 31-33 (CS).
[1973] Transcript of 30 November 2005, TF1-054, pp. 33-34 (CS).
[1974] Transcript of 30 November 2005, TF1-054, pp. 33-34 (CS); Transcript of 11 April 2008, Morris Kallon, p. 105.
[1975] Transcript of 30 November 2005, TF1-054, p. 34 (CS).
[1976] Transcript of 21 April 2008, Hassan Deko Salu, pp. 76-77, 98.
[1977] Transcript of 30 November 2005, TF1-054, pp. 34-35 (CS).
[1978] Transcript of 30 November 2005, TF1-054, p. 34 (CS).

committed intentionally by the perpetrators. The Chamber recalls that the Prosecution has proved beyond reasonable doubt that an armed conflict and a widespread or systematic attack against the civilian population of Sierra Leone existed in Bo District at the time.[1980] Unless otherwise stated below, the Chamber finds that the perpetrators' acts formed part of the widespread or systematic attack against the civilian population, and that the perpetrators were aware of this. In addition, unless otherwise stated, the Chamber concludes that a nexus existed between these acts and the armed conflict and that the perpetrators knew that the victims were not taking a direct part in hostilities.

3.2.1. Unlawful Killings (Counts 3 to 5)

1017. The Prosecution alleges that between about 1 June 1997 and 30 June 1997, AFRC/RUF fighters attacked Tikonko, Telu, Sembehun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians,[1981] by shooting, hacking or burning them to death.[1982] We have found in the Rule 98 Decision that no evidence of unlawful killings was adduced with respect to Telu and Mamboma, despite the allegations in the Indictment.[1983]

3.2.1.1. Tikonko

1018. The only reasonable inference to be drawn from the testimony of TF1-004 that the man from Bumpe and his wife and children "fell like leaves" at Tikonko Junction is that they were indiscriminately shot and killed by the attacking fighters. The Chamber observes that the witness did not specify the number of children accompanying the couple. However, as the witness referred to them in the plural, the Chamber is satisfied that more than two children were killed. The Chamber is further satisfied from the testimony of TF1-004 that the fighters killed many other civilians at the junction and on the roads to Bo and Tikonko.[1984] Accordingly, the Chamber finds that many civilians were unlawfully killed at Tikonko Junction and that those acts constitute murder as charged in Counts 4 and 5 of the Indictment.

[1979] Transcript of 18 April 2008, Kallon, p. 42; Transcript of 21 April 2008, Hassan Deko Salu, pp. 76-77; Transcript of 21 April 2008, DMK-160, p. 56. *See also* Exhibit 178, United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997", 30 January 1998, p. 19584.
[1980] *Supra* paras 962-963.
[1981] Indictment para. 46.
[1982] Indictment para. 45.
[1983] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 18, 41-42.
[1984] *Supra* para. 997.

1019. Although we are satisfied that Junta fighters also killed at least two Kamajors at or near Tikonko Junction, we note that one of the Kamajors was armed.[1985] There is insufficient evidence to conclude beyond reasonable doubt that the Kamajors were *hors de combat* at the time. Accordingly, we find that these acts do not constitute unlawful killings as charged in Counts 4 and 5 of the Indictment.

1020. The Chamber finds that the executions of 14 civilians in a house in Tikonko[1986] constitute unlawful killings, as charged in Counts 4 and 5. In respect of the woman found alive inside the house,[1987] the Chamber finds that the evidence is insufficient to prove beyond reasonable doubt that the woman died from her injuries.

1021. The Chamber finds that the many corpses that TF1-004 saw in the street, including those of the two men he observed after leaving the house and the woman with an open stomach wound found lying on her slain companion,[1988] were civilians who had been killed by the fighters. The Chamber finds that these killings are acts constituting murder as charged in Counts 4 and 5 of the Indictment.

1022. Based on the evidence of TF1-004 that the civilians of Tikonko buried over 200 corpses in the wake of the attack,[1989] the Chamber finds that a massive number of civilians were indiscriminately killed in Tikonko. Tikonko was not a war front; rather the fighters carried out executions of civilians in homes and at a school. The killings occurred over a short time span in numerous locations throughout the town and on the roads entering the town.[1990] The nature of the attack established beyond reasonable doubt that the Junta fighters intended to kill civilians on a massive scale. The Chamber accordingly finds that the unlawful killings in Tikonko constitute extermination, as charged in Count 3.

3.2.1.2. Sembehun

1023. The Chamber is not satisfied from the evidence that Sheriff died as a result of his

[1985] *Supra* paras 996-997.
[1986] *Supra* para. 1000.
[1987] *Supra* para. 1000.
[1988] *Supra* para. 1003.
[1989] *Supra* para. 1004.
[1990] *Supra* paras 1003-1004.

injuries after being shot by the RUF.[1991] However, the Chamber finds that the killing of the civilian Tommy Bockarie by RUF fighters under Bockarie's command[1992] constitutes murder, as charged in Counts 4 and 5 of the Indictment.

3.2.1.3. Gerihun

1024. The Chamber is satisfied that AFRC fighters, acting on the orders of Boisy Palmer, killed Paramount Chief Demby and Pa Sumaili.[1993] The Chamber further concludes that AFRC fighters killed many other civilians, including those five whose corpses in civilian clothes were seen by TF1-054 near the market.[1994]

1025. The Chamber therefore finds that many civilians were unlawfully killed by AFRC fiighters in Gerihun and that these acts constitute murder as charged in Counts 4 and 5 of the Indictment.

3.2.2. Pillage (Count 14)

1026. The Prosecution alleges that between 1 June 1997 and 30 June 1997, AFRC/RUF forces engaged in widespread looting and burning of civilian property in Telu, Sembehun, Mamboma and Tikonko.[1995] No evidence of pillage was adduced with respect to Telu and Mamboma.[1996]

1027. The Chamber recalls that the burning of property does not satisfy the essential elements of pillage.[1997] Therefore, the Chamber will only make findings on the evidence relating to looting. Although proof of pillage under international law does not require the items appropriated to be of significant value, we recall that the jurisdiction of the Court may only be exercised in respect of serious violations. We are of the opinion that to determine the seriousness of the violation, reference may be made to the nature, scope, dimension, or the collective scale of the looting, for instance by considering the number of people from whom

[1991] *Supra* para. 1008.
[1992] *Supra* para. 1007.
[1993] *Supra* para. 1014.
[1994] *Supra* para. 1014.
[1995] Indictment para. 78.
[1996] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 34-35.
[1997] *Supra* para. 212.

property is appropriated.[1998]

3.2.2.1. Tikonko

1028. The Chamber heard evidence from TF1-004 that upon his return to Tikonko, some of his belongings such as his clothes were missing from his house and others had been scattered on the street.[1999] TF1-004 further observed many other items of property, including bags of rice, on the street.[2000] The Chamber is not satisfied beyond reasonable doubt based on this evidence that civilian property was appropriated by fighters, as opposed to being destroyed or displaced in the chaos. The Chamber thus finds that this evidence is not sufficient to prove the crime of pillage.

3.2.2.2. Sembehun

1029. The Chamber recalls that Bockarie unlawfully appropriated Le 800,000 from Ibrahim Kamara, without Kamara's consent, in Sembehun in June 1997.[2001] We are satisfied that, in the context of Sierra Leone, this is a serious violation, as Le 800,000 is a significant sum of money and its loss would detrimentally impact on the victim. We thus find that this act constitutes pillage, as charged in Count 14 of the Indictment.

3.2.2.3. Gerihun

1030. The Chamber also heard evidence from Hassan Deko Salu that there was looting in Gerihun during the attack.[2002] However, the Prosecution did not adduce evidence pertaining to the scale of the looting, the nature of the property appropriated or the persons from whom it was appropriated. In the absence of such evidence to establish that the violation was sufficiently serious, the Chamber finds that the crime of pillage was not established with respect of this incident.

3.2.3. Acts of Terrorism (Count 1)

1031. The Prosecution alleges that members of the AFRC/RUF subordinate to and/or acting

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[1998] *Supra* para. 212.
[1999] *Supra* para. 999.
[2000] *Supra* para. 999.
[2001] *Supra* para. 1007.
[2002] *Supra* para. 1010.

in concert with the Accused committed unlawful killings, looting and burning in Bo District between 1 June 1997 and 30 June 1997 with the specific intent to spread terror among the civilian population.

3.2.3.1. Tikonko

1032. In the Chamber's view, the burning of numerous houses in the first attack on Tikonko[2003] and the burning of more than 500 houses during the second attack on Tikonko[2004] were not directed at any military or other legitimate objective. Rather, the Chamber finds that the burnings were acts of violence directed against civilian property which were intended to cause terror among the civilians of Tikonko and constitutes acts of terrorism as charged under Count 1 of the Indictment.

1033. The Chamber is of the opinion that the manner in which civilians were killed in Tikonko demonstrates the perpetrators' intent to spread terror amongst the population as a whole. Over 200 persons were killed and civilians were targeted in their homes and in a school.[2005] We further note that the mutilation of the corpse of a civilian who had been shot in the chest, with his head severed and his legs broken, was an act intended to instil terror in those who witnessed the result.[2006] Finally, the fighters while leaving Tikonko were singing "those people would know us today."[2007] The Chamber is satisfied on the basis of this evidence that the killings in Tikonko also constitute acts of terror, as charged in Count 1 of the Indictment.

3.2.3.2. Sembehun

1034. The Chamber is not satisfied that the looting of money from Ibrahim Kamara[2008] was committed with the intent to spread terror among the civilian population in general. The Chamber therefore finds that this act of pillage does not constitute an act of terrorism under Count 1 of the Indictment.

[2003] *Supra* para. 994.
[2004] *Supra* para. 1005.
[2005] *Supra* para. 1004.
[2006] *Supra* para. 1001.
[2007] *Supra* para. 998.
[2008] *Supra* para. 1007.

1035. The Chamber finds that the burning of over 30 houses in Sembehun and the killing of Tommy Bockarie[2009] were acts of violence willfully directed against the civilian population. As we observed above, these acts served no discernible purpose apart from terrorising the civilian population. The Chamber notes the close proximity of this attack to the attacks on Tikonko and Gerihun; the public insult of the section chief Ibrahim Kamara as a "fucking civilian"; and the actions of the troops in firing indiscriminately around the town.[2010] On the basis of these facts, the Chamber is satisfied that the perpetrators specifically intended to spread terror among the civilian population of Sembehun. The Chamber finds that the burning of homes and killing of Tommy Bockarie constitute acts of terrorism as charged under Count 1 of the Indictment.

3.2.3.3. Gerihun

1036. The Chamber finds that the killings of Paramount Chief Demby, Pa Sumaila and an unknown number of civilians, which took place in the vicinity of public places such as the market in Gerihun,[2011] are acts of violence willfully directed at the civilian population. The Chamber finds that the targeting of the Paramount Chief, the most prominent member of the community, was an act capable of spreading terror among the civilian population. The Chamber further recalls the evidence of TF1-004 that when the attack commenced, civilians were running and searching for places to hide.[2012] The Chamber concludes that this evidence, coupled with the proximity of the attack to the attacks on Sembehun and Tikonko, establishes that the specific intent of the perpetrators was to spread terror among the civilian population of Gerihun, We find that the killings in Gerihun constitute acts of terrorism as charged under Count 1 of the Indictment.

1037. For the foregoing reasons, the Chamber is satisfied that the burnings in Tikonko and Sembehun and the unlawful killings in Tikonko, Sembehun and Gerihun constitute acts of terrorism as charged in Count 1 of the Indictment.

[2009] *Supra* para. 1014.
[2010] *Supra* para. 1007.
[2011] *Supra* para. 1014.
[2012] *Supra* para. 1011.

3.2.4. Collective Punishments (Count 2)

1038. The Prosecution alleges that members of the AFRC/RUF subordinate to and/or acting in concert with the Accused committed unlawful killings, looting and burning in Bo District between 1 June 1997 and 30 June 1997 with the specific intent to collectively punish persons taking no direct part in hostilities.[2013]

1039. The Chamber recalls that prior to the first attack on Tikonko, rumours circulated that the AFRC/RUF intended to attack the town as they suspected that Kamajors were hiding there, and that Kamajors were killed in the second attack on Tikonko.[2014] The Chamber has found that AFRC/RUF forces did terrorise the civilian populations of Tikonko, Sembehun and Gerihun by burning houses and indiscriminately killing civilians.

1040. However, the evidence is inconclusive as to whether the AFRC/RUF forces committed these crimes because the civilians were suspected of collaborating with Kamajors or of failing to support the AFRC/RUF. The Chamber is not satisfied beyond reasonable doubt that the perpetrators acted with the intent of collectively punishing the civilians for acts for which they may or may not have been responsible.

1041. For this reason, the Chamber finds that the Prosecution has not established beyond reasonable doubt that these acts constitute acts of collective punishment, as charged in Count 2 of the Indictment.

4. Crimes in Kenema District

4.1. Factual Findings on the Crimes in Kenema District

4.1.1. Background to Kenema District

1042. Kenema District is located in the south-eastern part of Sierra Leone. Its capital is Kenema, which is often referred to as Kenema Town. Tongo Field, the second biggest town, is renowned for its diamond mines. As a result of its location and resources, Kenema was strategically important to the AFRC/RUF Junta as they relied on the proceeds from the sale of

[2013] Indictment, para. 44.
[2014] *Supra* para. 997.

diamonds for their operations.[2015]

1043. Within one week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of the town.[2016] Large numbers of RUF fighters from different areas began arriving in Kenema District, many of whom went to Kenema Town and other towns to operate mining sites in Tongo Field.[2017] Although both the RUF and AFRC operated alluvial mining sites in Kenema District during the Junta period, mining within the Tongo Field area was carried out predominantly by the RUF.[2018]

1044. The AFRC/RUF abandoned Kenema Town and Tongo Field after the Intervention in February 1998, as ECOMOG and the Kamajors were approaching their positions.[2019] At this time, the AFRC/RUF declared "Operation Pay Yourself," which sanctioned and encouraged the looting of civilian property. AFRC/RUF rebels looted goods including rice and food for about three days prior to their departure from Kenema Town, capturing civilians and forcing them to carry the goods.[2020] Other items looted from Kenema Town during "Operation Pay Yourself" included trucks, medicines, a Honda motorcycle, bicycles and money.[2021]

4.1.2. Kenema Town

1045. The Chamber has heard evidence of numerous incidents of beatings and killings in Kenema Town during the Junta period. Whilst we have not always been able to determine the specific dates of each incident, we are satisfied that the acts described in the paragraphs that follow occurred within the Indictment period.

4.1.2.1. The "Flag Trick" and the beating of TF1-122

1046. It was common practice in Kenema Town for those in the vicinity of the Junta Secretariat building in Hangha Road to stand still during the daily raising and lowering of the

[2015] Exhibit 181, NPWJ Conflict Mapping Report, pp. 24251-24252; Transcript 20 July 2006, TF1-371, pp. 36-42, 52-54.
[2016] Transcript of 7 July 2005, TF1-122, p. 55.
[2017] Transcript of 12 May 2005, TF1-125, p. 97; Transcript of 13 May 2005, TF1-125, p. 41.
[2018] Transcript of 20 July 2006, TF1-371, p. 51-52 (CS); Transcript of 25 October 2007, DIS-069, p. 31.
[2019] Transcript of 12 May 2005, TF1-125, pp. 140-141; Transcript of 8 May 2007, Issa Sesay, p. 51; Transcript of 14 May 2005, TF1-125, p. 7; Transcript of 7 July 2005, TF1-122, p. 57.
[2020] Transcript of 12 May 2005, TF1-125, pp. 142-143.
[2021] Transcript of 21 November 2005, TF1-045, pp. 8-9, 11.

Sierra Leonean flag.[2022] While the AFRC/RUF controlled Kenema, the fighters raised and lowered the flag at the Secretariat building at irregular times. Individuals who did not stand still were harassed by the AFRC/RUF troops, who would appropriate from these individuals whatever money and property they had in their possession. TF1-122, a police officer, witnessed this practice regularly en route from his home to his office.[2023]

1047. On one occasion, TF1-122 saw RUF and AFRC rebels stop a woman who had not realised that the flag was being raised. They started to remove her property, including money.[2024] TF1-122 intervened and requested the troops to desist. The RUF and AFRC rebels accused him of being a 'saboteur,' arrested him and beat him thoroughly with a belt. He was locked up for two hours in a cell at the Secretariat building until his superiors from the police station requested his release.[2025]

4.1.2.2. TF1-129 arrested by Issa Sesay

1048. On 27 October 1997, following a successful AFRC/RUF attack on the ECOMOG base in Kenema Town, Issa Sesay along with his bodyguard Captain Lion forcibly entered TF1-129's office, where he was in discussion with another person.[2026] Sesay ordered "Molest them!" and TF1-129 and his associate were thrown to the floor. Sesay ordered TF1-129 to stand, and as TF1-129 did so, Sesay put an AK-47 gun between TF1-129's legs and fired.[2027] Sesay told TF1-129 that he had come to kill him.[2028] A struggle ensued and Sesay aimed the gun at TF1-129's forehead and chest, which TF1-129 pushed away. Sesay was drunk and fired twice in the air.[2029] Sesay aimed his weapon at TF1-129 again, but the ammunition in the gun was spent and it did not discharge and he accused TF1-129 of being a Kamajor.[2030]

1049. A rebel named Francis nicknamed Rambo heard the gunshots and came to ask what

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[2022] Transcript of 7 July 2005, TF1-122, p. 63. *See also* Transcript of 14 April 2008, Morris Kallon, p. 108, in which he testifies to witnessing the same practice on a visit to Kenema in September 1997.
[2023] Transcript of 7 July 2005, TF1-122, pp. 65-66.
[2024] Transcript of 7 July 2005, TF1-122, pp. 65, 67.
[2025] Transcript of 7 July 2005, TF1-122, pp. 65-66.
[2026] Transcript of 10 May 2005, TF1-129, pp. 49, 57-58 (CS). Sesay confirmed that he was sent with Colonel Lion to arrest TF1-129: Transcript of 8 May 2007, Issa Sesay, pp. 24-25.
[2027] Transcript of 10 May 2005, TF1-129, p. 59 (CS).
[2028] Transcript of 10 May 2005, TF1-129, p. 60 (CS).
[2029] Transcript of 11 May 2005, TF1-129, pp. 49-50, 67-69 (CS).
[2030] Transcript of 11 May 2005, TF1-129, pp. 69-70 (CS).

had happened.[2031] Sesay accused Francis of being a collaborator and ordered "On him!" About six rebels jumped on Francis and beat him until he was unconscious.[2032]

1050. Sesay ordered that TF1-129, Francis, TF1-129's associate and another woman be placed in the back of a van which was parked outside the building.[2033] While TF1-129 was in the boot, Captain Lion smashed a bottle against his head, which left a scar when healed. Captain Lion then took about Le 300.000 from TF1-129, as well as his wrist watch.[2034]

1051. The van was driven to the Secretariat building, where all of those that had been placed in the boot were released, with the exception of TF1-129.[2035] Someone announced that they had the "chief Kamajor" in custody and numerous rebels came to kick, spit at and urinate on TF1-129 while he lay in the boot.[2036] Sesay armed a small boy of approximately seven years of age with an AK-47, and instructed him to watch over TF1-129 and to kill him if he moved. The boy told TF1-129, "We'll put out your engine tonight." The boy was so small that "he could hardly even handle the rifle," and had to lean the weapon against his leg, while pointing it at TF1-129's head.[2037]

1052. TF1-129 was subsequently brought upstairs at the Secretariat building to see Bockarie and Sesay, and was beaten by rebels who were standing alongside the staircase as he ascended.[2038] The rebels were celebrating of their victory over ECOMOG.[2039] Bockarie asked TF1-129 who had beaten him, and when TF1-129 replied that it was Sesay and his bodyguards, Sesay spoke to Bockarie and repudiated this accusation.[2040] Bockarie and Sesay then spoke in private, after which one of them ordered that TF1-129 be kept in the "dungeon" and he was led to a small storeroom in the Secretariat building. The storeroom was crowded with arrested civilians. Since he was considered to be a "big man," the rebels took TF1-129 to another storeroom upstairs. He was beaten on his way to the first storeroom and again on his way to

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[2031] Transcript of 10 May 2005, TF1-129, p. 60 (CS).
[2032] Transcript of 10 May 2005, TF1-129, pp. 61-62 (CS).
[2033] Transcript of 10 May 2005, TF1-129, p. 63 (CS); Transcript of 11 May 2005, TF1-129, pp. 3, 7-9 (CS).
[2034] Transcript of 10 May 2005, TF1-129, p. 63 (CS).
[2035] Transcript of 11 May 2005, TF1-129, pp. 13-15 (CS).
[2036] Transcript of 10 May 2005, TF1-129, pp. 63-64 (CS).
[2037] Transcript of 10 May 2005, TF1-129, pp. 64-65 (CS).
[2038] Transcript of 10 May 2005, TF1-129, pp. 65-66 (CS).
[2039] Transcript of 11 May 2005, TF1-129, pp. 15-16 (CS).
[2040] Transcript of 11 May 2005, TF1-129, pp. 18-20 (CS). However, the Chamber notes that Sesay in his testimony confirmed that he had arrested TF1-129 on Bockarie's orders, Transcript of 8 May 2007, Issa Sesay, pp. 33-38.

the second storeroom, where he was detained overnight.[2041]

1053. The next morning, a representative of the ICRC as well as several prominent community members and relatives of TF1-129 came to the Secretariat building to enquire about his arrest.[2042] It was discovered that TF1-129 was arrested on suspicion that he had assisted Kamajors to plan an attack on Kenema Town. The AFRC/RUF conducted an investigation for three days but did not find any evidence to substantiate the allegation, so TF1-129 was eventually released. Bockarie then told him to leave Kenema.[2043]

4.1.2.3. 'Flogging' of Police Commissioner Konneh and Chief Police Officer Issa

1054. One morning during the Junta period, Sesay came into the police station with traffic police officer Abdul Karim Koroma (AKK). AKK had quarrelled with a colleague who was related to the Police Commissioner. AKK announced that he was a brother of Sesay. They went into the offices of the Police Commissioner Konneh and the Chief Police Officer (CPO), Francis Issa.[2044]

1055. Sesay ordered the Commissioner and the CPO to get into his vehicle and they were "shoved in [the car] actually in a rough manner" by Sesay's men.[2045] Approximately six hours later, the two men returned in Sesay's vehicle. TF1-122 observed that both men were "very sad in their faces."[2046] When he enquired, he was told by other police officers that the Commissioner and the CPO had been "humiliated" by Sesay and his men. TF1-122 explained that the Commissioner and the CPO had been taken against their will and held by Sesay for an entire day, and this constituted humiliation.[2047]

1056. TF1-125 also observed that when the Commissioner and the CPO returned, "they had kind of an unhappy mood."[2048] Upon inquiring, he was told that the two men had been

[2041] Transcript of 10 May 2005, TF1-129, pp. 67-69 (CS).
[2042] Transcript of 10 May 2005, TF1-129, p. 69 (CS).
[2043] Transcript of 10 May 2005, TF1-129, pp. 70-71 (CS).
[2044] Transcript of 7 July 2005, TF1-122, pp. 74-75; Transcript of 8 July 2005, TF1-122, pp. 46-51; Confidential Exhibit 29, Written Response of TF1-125; Transcript of 16 May 2005, TF1-125, p. 48.
[2045] Transcript of 12 May 2005, TF1-125, p. 139.
[2046] Transcript of 7 July 2005, TF1-122, p. 76.
[2047] Transcript of 7 July 2005, TF1-122, pp. 75-76.
[2048] Transcript of 12 May 2005, TF1-125, p. 139.

"flogged."[2049]

4.1.2.4. Three corpses at Mambu Street

1057. During the Junta period, the AFRC and RUF, including Bockarie and Akim, attacked a house on Mambu Street on the premise that Kamajors were inside. The house was looted and burned.[2050] The police discovered behind the house the corpses of three people killed during the attack. The bodies were in civilian clothing.[2051]

4.1.2.5. Killing of a suspected Kamajor at the NIC building

1058. On one occasion between May 1997 and February 1998, TF1-122 watched from his office as a group of RUF rebels marched a man through Khobe Street in Kenema. The man was dressed in the working clothes of a farmer, covered in mud and carrying a cutlass in his hand. The rebels were singing that they had caught a Kamajor and were taking him to Bockarie.[2052]

1059. TF1-122, a police officer, pursued the rebels but before he reached them he heard two gunshots, apparently from a pistol. When he arrived on the scene, near the NIC building, TF1-122 saw the farmer dying, with gunshot wounds to his head and stomach. Bockarie was present, "brandishing his pistol in the air, boasting that he must do away with all the Kamajors."[2053] Bockarie ordered his men to dispose of the body in a pit behind the NIC building.[2054]

4.1.2.6. Killing of Mr. Dowi

1060. One morning during the Junta period, Mrs. Dowi went to the police station and reported that the AFRC and RUF had attacked her family at their home in Kenema Town. Mrs. Dowi stated that when her husband had intervened in order to stop the AFRC and RUF rebels from looting their freezer, the rebels shot him in the head and the stomach and he died. TF1-122 visited Mrs. Dowi's house and saw the body of Mr. Dowi with two gunshot

[2049] Transcript of 12 May 2005, TF1-125, pp. 139-140.
[2050] Transcript of 7 July 2005, TF1-122, pp. 72-73.
[2051] Transcript of 7 July 2005, TF1-122, pp. 73-74.
[2052] Transcript of 7 July 2005, TF1-122, p. 77.
[2053] Transcript of 7 July 2005, TF1-122, p. 78.
[2054] Transcript of 7 July 2005, TF1-122, pp. 77-78; Transcript of 8 July 2005, TF1-122, p. 19.

wounds.[2055]

4.1.2.7. Killing of Bonnie Wailer and two others

1061. In the early months of the Junta regime, TF1-122 encountered one Bonnie Wailer in the cell at the police station, wearing military trousers and a plain T-shirt.[2056] Wailer was bloody and had wounds all over his body.[2057] Wailer informed TF1-122 that he and others had broken into a house and he had been caught, beaten and kept in the police station overnight.[2058] The thieves had been wearing military uniforms and the AFRC did not want people to think that the AFRC fighters were committing burglary.[2059]

1062. Bockarie arrived at the police station and directed Wailer to take him to identify the others who had been involved in the burglary. Bockarie and Wailer returned two hours later with two other men,[2060] Sydney Cole and Mr. Bangura.[2061] These two men had been shot in the legs when they were arrested.[2062]

1063. On Bockarie's orders, AFRC and RUF fighters shot and killed Wailer and the two other men outside the police station.[2063] Eddie Kanneh and other AFRC Commanders were also present.[2064] The RUF returned later in a vehicle and took the bodies of the dead men away.[2065]

4.1.2.8. Killing of two alleged thieves

1064. On one occasion during the Junta period, the Kenema Town police investigated the theft of drugs from the ICRC or *Médecins Sans Frontières*. Bockarie informed them that he was going to assist in the investigation.[2066] Later that day, TF1-122 heard that Bockarie had

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[2055] Transcript of 7 July 2005, TF1-122, pp. 78-79.
[2056] Transcript of 7 July 2005, TF1-122, p. 68. TF1-125 refers to Bonnie Wailer as Bunny Wailer: Transcripts of 12-13 May 2005. We are satisfied that TF1-122 and TF1-125 are referring to the same person.
[2057] Transcript of 13 May 2005, TF1-125, p. 17.
[2058] Transcript of 13 May 2005, TF1-125, p. 14 (CS); Transcript of 7 July 2005, TF1-122, pp. 68-69.
[2059] Transcript of 13 May 2005, TF1-125, pp. 13-14.
[2060] Transcript of 7 July 2005, TF1-122, pp. 69-70.
[2061] Transcript of 13 May 2005, TF1-125, pp. 20, 25.
[2062] Transcript of 12 May 2005, TF1-125, p. 102; Transcript of 13 May 2005, TF1-125, p. 19 (CS).
[2063] Transcript of 12 May 2005, TF1-125, pp. 102-103; Transcript of 13 May 2005, TF1-125, pp. 28-29 (CS); Transcript of 7 July 2005, TF1-122, pp. 70-71.
[2064] Transcript of 13 May 2005, TF1-125, pp. 23-25.
[2065] Transcript of 7 July 2005, TF1-122, pp. 70-71.
[2066] Transcript of 7 July 2005, TF1-122, pp. 79-80.

captured and executed a man named Santos, who was the operator of the Kenema cinema, and another man unknown to TF1-122.[2067] That evening, TF1-122 found the bodies of the two men lying in front of his house. The bodies remained there for three days before Bockarie's boys removed them.[2068]

4.1.2.9. Killing of an alleged Kamajor boss

1065. During the Junta period, the RUF rebels and the AFRC launched "Operation No Living Thing" as a pre-emptive measure due to rumours of an impending Kamajor attack. That afternoon, the AFRC and the RUF commenced widespread looting and burning of houses of suspected Kamajors.[2069] The next morning, TF1-122 returned to Kenema Town and saw a large man dressed in "plain cloth" lying motionless in the street in front of his house.[2070] The AFRC and RUF rebels were dancing around the body and singing that they had captured and killed the Kamajor boss. One of the fighters removed his bayonet, stabbed the corpse and removed the intestines, pulling them across the street to function as a makeshift checkpoint. The body remained there for three days.[2071]

4.1.2.10. Arrest of suspected Kamajors in Kenema Town

1066. In late January 1998, Bockarie arrested B.S. Massaquoi, the Chairman of Kenema Town Council; Andrew Quee, a civil servant; Brima Kpaka, a prominent businessman; and four others. The detainees were suspected of being Kamajor collaborators.[2072]

1067. Shortly thereafter, TF1-129 was re-arrested on Bockarie's orders and again taken to the Secretariat building. Bockarie incarcerated TF1-129, beat him with his gun and punched him in the face, leaving a scar above his right eye. Bockarie threatened to kill TF1-129 for refusing to leave Kenema after his first arrest.[2073] Bockarie forced him to undress and stand in a corner overnight.[2074]

[2067] Transcript of 7 July 2005, TF1-122, pp. 80-81.
[2068] Transcript of 7 July 2005, TF1-122, p. 81.
[2069] Transcript of 7 July 2005, TF1-122, pp. 81-82.
[2070] Transcript of 7 July 2005, TF1-122, pp. 82-83.
[2071] Transcript of 7 July 2005, TF1-122, p. 83.
[2072] Transcript of 19 January 2005, TF1-071, pp. 11-12; Transcript of 11 May 2005, TF1-129, p. 30 (CS); Transcript of 12 May 2005, TF1-125, p. 104; Transcript of 7 July 2005, TF1-122, pp. 84-85.
[2073] *Supra* para. 1053.
[2074] Transcript of 10 May 2005, TF1-129, pp. 71-73 (CS); Transcript of 11 May 2005, TF1-129, pp. 27-28 (CS).

1068. Paramount Chief Moinama Karmoh was arrested the same day.[2075] Bockarie beat Karmoh over the head with a plastic walking stick until it broke.[2076]

1069. TF1-129 watched six rebels strip B.S. Massaquoi to his underwear and beat him mercilessly for approximately an hour with a whip fashioned from pieces of tied rubber. During the beating B.S. Massaquoi was shouting for help. Brima Kpaka was then beaten in the same fashion. Andrew Quee and Moinama Karboh were also present. TF1-129 observed more people held downstairs and was told that there were 28 detainees in total.[2077]

1070. The next morning, TF1-122 observed a large crowd of people gathered outside the Secretariat building. Bockarie, holding his pistol in the air, informed the crowd that B.S. Massaquoi and the other detainees were supporting the Kamajors and that he was going to teach them a good lesson.[2078] Upon entering the building, TF1-122 saw B.S. Massaquoi, Brima Kpaka, Andrew Quee and four other people. The men were wounded and in tears. Their hands were tied at their back and the rope was cutting into their flesh. Brima Kpaka had a severe cut near his eyes, B.S. Massaquoi's face was swollen and the others had various injuries on their bodies.[2079]

1071. The detainees were detained for 12 days during which time they were constantly threatened.[2080] Johnny Paul Koroma requested that they be transferred to Freetown, but Bockarie refused.[2081] When TF1-129 was eventually released from detention, he fled from Kenema.[2082]

4.1.2.11. Beating and killing of B.S Massaquoi and others

1072. On 28 January 1998, B.S. Massaquoi and the other detainees excluding TF1-129, who had been released, were brought to the police station for further investigation.[2083] B.S. Massaquoi and Brima Kpaka had wounds to their elbows from being constantly tied with rope.

[2075] Transcript of 11 May 2005, TF1-129, pp. 27-28 (CS).
[2076] Transcript of 11 May 2005, TF1-129, p. 29 (CS).
[2077] Transcript of 10 May 2005, TF1-129, pp. 74-77 (CS).
[2078] Transcript of 7 July 2005, TF1-122, p. 85.
[2079] Transcript of 7 July 2005, TF1-122, pp. 85-86.
[2080] Transcript of 10 May 2005, TF1-129, p. 77 (CS).
[2081] Transcript of 10 May 2005, TF1-129, pp. 77-78 (CS).
[2082] Transcript of 10 May 2005, TF1-129, p. 78 (CS).

The wounds had become septic as the men had not received medical treatment.[2084]

1073. Bockarie alleged that the men were collaborating with Kamajors.[2085] The police found no evidence of these allegations and recommended that all men be released. The police obtained the permission of the Secretary of State to release only B.S. Massaquoi and Brima Kpaka on 30 January 1998 on account of their wounds.[2086]

1074. Subsequently, Bockarie returned to Kenema and asked to see B.S. Massaquoi and the other detainees. He was furious when the police informed him that the men had been released. Bockarie pulled his gun on the Police Commissioner and threatened to kill him and destroy the police station if the men were not re-arrested. [2087] On 2 February 1998, B.S. Massaquoi was re-arrested. Brima Kpaka was not re-arrested, as he was in the hospital.[2088]

1075. On 6 February 1998, AFRC military police surrounded the Kenema Town Police Station. AFRC Lieutenant A.B. Turay announced that he had been assigned by the Secretary of State East to collect B.S. Massaquoi and the other detainees.[2089] They beat B.S. Massaquoi and five other detainees in front of the police and took them away.[2090]

1076. The detainees were taken before Bockarie. When B.S. Massaquoi denied the allegations that he supported the Kamajors, Bockarie grew angry and began to beat him about the head with his gun. B.S Massaquoi was flogged for over an hour before being sent back to prison.[2091] As the "investigation" continued, Bockarie repeatedly flogged B.S. Massaquoi with a whip fashioned from pieces of tied rubber and with a pistol.[2092] Bockarie threatened to kill B.S.

[2083] Exhibit 28, CID Kenema Office Station Diary, Entry 46 for 28 January 1998, p. 8553; Transcript of 12 May 2005, TF1-125, pp. 105, 130-131; Transcript of 7 July 2005, TF1-122, p. 86.
[2084] Transcript of 12 May 2005, TF1-125, pp. 105-106.
[2085] Transcript of 7 July 2005, TF1-122, p. 86.
[2086] Exhibit 28, CID Kenema Office Station Diary, Entry 50 for 30 January 1998, p. 8568; Transcript of 12 May 2005, TF1-125, pp. 106-107, 131-132; Transcript of 7 July 2005, TF1-122, pp. 87-88.
[2087] Transcript of 7 July 2005, TF1-122, pp. 88-89.
[2088] Exhibit 28, CID Kenema Office Station Diary, Entry 50 for 2 February 1998, p. 8593; Transcript of 12 May 2005, TF1-125, pp. 107-108, 133-134; Transcript of 7 July 2005, TF1-122, pp. 88-89.
[2089] Transcript of 12 May 2005, TF1-125, pp. 108-109, 134-136; Transcript of 7 July 2005, TF1-122, pp. 89-90; Transcript of 8 July 2005, TF1-122, pp. 81-82; Exhibit 28, CID Kenema Office Station Diary, Entry 8 for 6 February 1998, p. 8618: "Following suspects Andrew Quee, Issa Ansumana, Abdulai Bockarie, Abdulai Saidu Quee, Brima S Massaquoi and John Swaray are handed over to Lieutenant AB Touray on the orders of Secretary of State East." *See also*: Exhibit 28, CID Kenema Office Station Diary, Entry 10 for 6 February 1998, p. 8619.
[2090] Transcript of 12 May 2005, TF1-125, p. 109; Transcript of 7 July 2005, TF1-122, pp. 89-90.
[2091] Transcript of 19 January 2005, TF1-071, pp. 15-16.
[2092] Transcript of 19 January 2005, TF1-071, pp. 17-18.

Massaquoi if he did not admit the allegations. When B.S. Massaquoi continued to deny the allegations, Bockarie beat him until he lost consciousness.[2093]

1077. In the morning of 8 February 1998, Kamajors came into Kenema Town to rescue B.S. Massaquoi and the other detainees. The Kamajors were not able to find them at the police station, but were able to take Brima Kpaka from the hospital before being driven out by the rebels.[2094]

1078. On 8 February 2008, the corpses of B.S. Massaquoi, Andrew Quee and four of the other detainees were discovered. It was rumoured that they had been killed by Bockarie and his men.[2095] TF1-125 was told that B.S. Massaquoi was beheaded and his severed head had been tied to a pole and displayed in Kenema.[2096]

1079. Kallon heard that Bockarie and Eddie Kanneh had killed B.S. Massaquoi and certain other civilians for supporting Kamajors.[2097]

4.1.3. Tongo Field

4.1.3.1. Killing at Lamin Street

1080. On one occasion at Lamin Street in Tongo Field, a number of civilians attempted to challenge AFRC/RUF fighters who had been capturing civilian women at night and raping them. The fighters shot a civilian man and killed him. This incident was reported to the Secretariat.[2098]

4.1.3.2. Killing of Limba man for his palm wine

1081. During the Junta period in 1997, an AFRC/RUF fighter killed a Limba man for refusing to give him palm wine. Captain Yamao Kati ordered that as the fighter had used his

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[2093] Transcript of 19 January 2005, TF1-071, pp. 18-19.
[2094] Transcript of 7 July 2005, TF1-122, p. 91.
[2095] Transcript of 19 January 2005, TF1-071, pp. 21-22; Transcript of 12 May 2005, TF1-125, p. 109; Transcript of 7 July 2005, TF1-122, pp. 91-93; *See also* Exhibit 176, Amnesty International, "Sierra Leone 1998 – a year of atrocities against civilians," p. 19496.
[2096] Transcript of 12 May 2005, TF1-125, p. 109.
[2097] Transcript of 14 April 2008, Morris Kallon, pp. 106-107.
[2098] Transcript of 18 November 2005, TF1-045, pp. 75-76 (CS).

hand to fire a gun at a civilian, the fighter should also be shot in the hand.[2099]

4.1.3.3. Killings at Cyborg Pit

1082. On several occasions in early August 1997 at Cyborg Pit, diamonds that had been found by civilians were handed over to Bockarie without payment or compensation. On one such occasion, the civilians began to complain and resolved to mine for themselves. A large group of these civilians entered a pit to fetch gravel. Bockarie ordered them to climb out of the pit. While they were slowly doing so, Bockarie ordered Colonel Manawa to fire at the people so that they would move faster. Colonel Manawa fired his RPG in the air. The SBUs, however, opened fire into the pit, killing more than 20 civilians in the presence of Bockarie.[2100]

1083. After the killings described in paragraph 1082, a group of civilians decided to strike and they returned to Tongo Field. On the third day of the strike, eleven civilians were captured, beaten and detained at the AFRC/RUF headquarters. The civilians were accused of having "instigated the boys not to mine" for the AFRC/RUF and remained imprisoned for three days.[2101]

1084. Two days after their release, a group of civilians were taken at gunpoint to mine for the rebels at Cyborg Pit. After several hours of mining, work stopped when a diamond was found and given to Bockarie. Bockarie then left and the other Commanders, led by a Junior Commander named Mustapha, instructed the civilians to mine for them. An SBU arrived and a dispute arose when Mustapha informed the SBU that he had authorised the civilians to mine for him. The SBU threatened to report to Kallon, who was Mustapha's boss, that people were mining without authorisation. A group of Commanders, including Kallon, then arrived at the edge of the pit and ordered the miners to climb out. The SBUs, standing with the Commanders, fired into the pit and killed 25 civilians, including TF1-035's nephew. Other civilians in the vicinity ran away from the pit. When they returned, they were ordered to remove the corpses from the pit.[2102]

1085. Sometime in August 1997, while senior Commanders were engaged in festivities, some

[2099] Transcript of 18 November 2005, TF1-045 pp. 76-77 (CS).
[2100] Transcript of 5 July 2005, TF1-035 pp. 85-87.
[2101] Transcript of 5 July 2005, TF1-035 pp. 87-88.
[2102] Transcript of 5 July 2005, TF1-035 pp. 91-94.

Junior Commanders took a group of civilians to mine at Cyborg Pit. This resulted in a quarrel with the SBUs guarding the pit, one of whom reported the matter to Kallon. Kallon then went to Cyborg Pit and RUF rebels shot at the civilians who were mining, killing 15 of them.[2103]

1086. The next morning, Colonel Gibbo visited civilians, including TF1-035, at their residence and informed them that 15 civilians had been shot at Cyborg Pit. [2104] The corpses of the civilians killed in this incident, and the 20 civilians killed in early August 1997, were buried in a pit behind the old NDMC plant.[2105]

1087. On another occasion at Cyborg Pit, AFRC fighters took civilians to mine outside of the scheduled mining hours. While they were mining at the pit, three civilians and two fighters were shot and killed by the fighters assigned to guard the pit.[2106]

4.1.3.4. Forced mining at Tongo Field and Cyborg Pit

1088. During the Junta period, alluvial mining in Kono was the major source of income of the AFRC/RUF regime.[2107] The Junta was experiencing difficulties generating revenue from taxes as the private sector was non-operational, there was widespread civil disobedience and the international embargo in place against Sierra Leone reduced trade.[2108] The Junta's Supreme Council therefore decided to appoint senior members to supervise alluvial diamond mining in Kono and Kenema and to use the revenue to pay for the salaries of members of the Council, the government, and logistics for military and the fighters, including the procurement of arms and ammunition.[2109] During the AFRC/RUF Junta, SAJ Musa was the Minister of Mines and his representative at the mines was Guilit.[2110]

1089. After the AFRC/RUF assumed control of Tongo Field in August 1997, mining was conducted pursuant to a centralised system. This system was announced by Bockarie at a meeting at the NDMC football field attended by approximately 1000 civilians.[2111] Bockarie

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[2103] Transcript of 5 July 2005, TF1-035, pp. 94-97.
[2104] Transcript of 5 July 2005, TF1-035, pp. 94-97.
[2105] Transcript of 5 July 2005, TF1-035, p. 97.
[2106] Transcript of 18 November 2005, TF1-045, pp. 74-75.
[2107] Transcript of 20 July 2006, TF1-371, pp. 34-35 (CS).
[2108] Transcript of 20 July 2006, TF1-371, pp. 34-35 (CS).
[2109] Transcript of 20 July 2006, TF1-371, pp. 36-43 (CS).
[2110] Transcript of 10 May 2007, Issa Sesay, p. 38.
[2111] Transcript of 5 July 2005, TF1-035, pp. 78-79.

informed the civilians that the AFRC/RUF had taken over Tongo and the rest of the country. He stated that everyone in Tongo was under his command and the civilians would now mine for the "government," meaning the AFRC/RUF. Bockarie promised that the civilians would be permitted two hours of private mining for every five hours that they mined for the "government." He then ordered everyone present to go to the mining site at Cyborg Pit.[2112] The civilians, comprising men, women and children, were marched to the pit where they started mining.[2113]

1090. The AFRC/RUF Secretariat in Tongo Field, headed by Gullit and Sergeant Junior and composed mainly of RUF rebels, created a Committee to oversee the mining and reported directly to Bockarie.[2114] The Committee was made up of predominantly elderly civilians who had been captured in Tongo, and its mandate was to assist the fighters in obtaining civilian labour, to identify potential mining sites and to help assess the diamonds found.[2115] The Committee also gathered the proceeds from the diamonds and delivered them over to Bockarie.[2116] Other Commanders in Tongo included Peleto and Major Goyeh, OG, BCH, Boyce – the last two being bodyguards to Sesay.[2117]

1091. Many civilians digged for diamonds in Tongo Field, and the diamonds found would be taken to the Secretariat to be valued.[2118] Diamonds were then either given to RUF Commanders including Bockarie, Sesay and Mike Lamin, or taken by AFRC Commanders to senior AFRC official Eddie Kanneh in Kenema.[2119] Eddie Kanneh was known to arrange for diamonds to be sold abroad to finance the acquisition of arms and ammunition.[2120]

1092. In addition to the "government" mining, some AFRC/RUF Commanders operated mining sites for their personal profit during the Junta period. Diamonds from these mines

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[2112] Transcript of 5 July 2005, TF1-035, p. 81.
[2113] Transcript of 5 July 2005, TF1-035, pp. 80-81.
[2114] Transcript of 18 November 2005, TF1-045, p. 68; Transcript of 20 July 2006, TF1-371, pp. 52, 76-77 (CS).
[2115] Transcript of 18 November 2005, TF1-045, pp. 68-69; Transcript of 20 July 2006, TF1-371, p. 53 (CS).
[2116] Transcript of 25 October 2007, DIS-069, p. 31.
[2117] Transcript of 11 November 2005, TF1-366, p. 39 (CS); Transcript of 20 July 2006, TF1-371, pp. 76-77 (CS); Transcript of 21 June 2006, TF1-367, pp. 58-59 (CS).
[2118] Transcript of 18 November 2005, TF1-045, p. 69; Transcript of 10 July 2006, TF1-041, pp. 19-21 (CS).
[2119] Transcript of 18 November 2005, TF1-045, p. 73; Transcript of 10 July 2006, TF1-041, pp. 19-21 (CS); Transcript of 20 July 2006, TF1-371, p. 54 (CS); Transcript of 22 June 2007, Issa Sesay, p. 21; Transcript of 26 October 2007, DIS-188, pp. 45-51 (CS).
[2120] Transcript of 10 July 2006, TF1-041, p. 21 (CS).

went directly to the Commanders: Sesay, Bockarie, Kallon, Colonel Banya and Eddie Kanneh all had bodyguards mining diamonds for them in Tongo Field.[2121] The Commanders were also given civilian manpower to mine for them.[2122]

1093. The AFRC/RUF "government" system was markedly different to the civilian mining that had occurred prior to the Junta period. Previously, mining sites were operated by civilians as private enterprises.[2123] The civilian bosses who owned the mining site were responsible for negotiating remuneration with the workers and providing them with food and medical assistance. Workers generally handed diamonds to their bosses in return for a share of the profits from the sale of the diamonds. After the AFRC/RUF Junta began in 1997, this form of civilian mining came to an end.[2124] In the "government" mining that was instituted by the AFRC/RUF, there was no negotiation between the civilians and the government. Civilians were captured and forced to mine without any payment.[2125]

1094. During the period from August to December 1997, up to 500 civilians in Tongo Field worked in the mining sites under the supervision of a mixture of armed AFRC and RUF fighters.[2126] Civilians were forcefully captured from the surrounding villages and taken to the mining sites. Those who were caught hiding in the bush were tied with ropes and taken to the sites.[2127] Civilians who attempted to escape were detained, stripped and left naked so that they would not be able to hide.[2128] The civilians were treated badly and almost all of them were haggard and shabbily dressed.[2129] The majority were not given food.[2130] Moreover, the civilians were not allowed to move freely in the mining sites and had to obtain passes for any movement.[2131]

[2121] Transcript of 10 July 2006, TF1-041, pp. 19-21 (CS).
[2122] Transcript of 7 November 2005, TF1-366, pp. 91-94 (CS); Transcript of 18 November 2005, TF1-045, pp. 59, 77-78, Transcript of 10 July 2006, TF1-041, pp. 20-21.
[2123] Transcript of 5 July 2005, TF1-035, p. 82.
[2124] Transcript of 5 July 2005, TF1-035, p. 82.
[2125] Transcript of 5 July 2005, TF1-035, p. 82.
[2126] Transcript of 18 November 2005, TF1-045, pp. 68-69; Transcript of 21 June 2006, TF1-367, pp. 60-61 (CS); Transcript of 10 July 2006, TF1-041, pp. 19-21 (CS).
[2127] Transcript of 18 November 2005, TF1-045, p. 98.
[2128] Transcript of 18 November 2005, TF1-045, pp. 59-60, 68-69, 97; Transcript of 10 July 2006, TF1-041, pp. 19-20; Transcript of 20 July 2006, TF1-371, p. 52 (CS).
[2129] Transcript of 20 July 2006, TF1-371, p. 53. (CS)
[2130] Transcript of 18 November 2005, TF1-045, p. 72.
[2131] Transcript of 5 July 2005, TF1-035 p. 83.

1095. Rules were established to control the times when civilians were to mine at the various pits.[2132] The Junta forces did not respect the two hours allotted to civilian personal mining that Bockarie had promised.[2133] Anyone who violated the rules was severely punished, and some civilians were killed.[2134] Miners were not allowed to work at night, and if they attempted to do so, they were punished.[2135]

4.2. Legal Findings on the Crimes in Kenema District

1096. The Prosecution alleges that the AFRC/RUF committed the crimes of unlawful killings (Counts 3 to 5) and physical violence (Counts 10 to 11) between about 25 May 1997 and about 19 February 1998, and the crime of enslavement (Count 13) between about 1 August 1997 and about 31 January 1998, in various locations throughout Kenema District. The Prosecution further alleges that these crimes constitute acts of terrorism and collective punishment (Counts 1 to 2).[2136]

1097. The Chamber is satisfied that each of the acts described in the following paragraphs were committed intentionally by the perpetrators. The Chamber recalls that the Prosecution has proved beyond reasonable doubt that an armed conflict and a widespread or systematic attack against the civilian population of Sierra Leone existed in Kenema District at the relevant time.[2137] Unless otherwise stated below, the Chamber finds that the perpetrators' acts formed part of the widespread or systematic attack against the civilian population, and that the perpetrators were aware of this. In addition, unless otherwise stated, the Chamber is satisfied that a nexus existed between these acts and the armed conflict and that the perpetrators knew that the victims were not taking a direct part in hostilities.

4.2.1. Unlawful Killings (Counts 3 to5)

1098. The Prosecution alleges that between about 25 May 1997 and about February 1998, in locations including Kenema Town, members of the AFRC/RUF unlawfully killed an unknown

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[2132] Transcript of 18 November 2005, TF1-045, pp. 74-75.
[2133] Transcript of 5 July 2005, TF1-035 p. 81.
[2134] Transcript of 18 November 2005, TF1-045, pp. 74-75.
[2135] Transcript of 13 November 2007, DIS-293, pp. 92-93.
[2136] Indictment, paras 47, 63, 70.
[2137] *Supra* para. 946.

number of civilians.[2138]

4.2.1.1. Kenema Town

4.2.1.1.1. Killing of B.S Massaquoi, Andrew Quee and four others

1099. The Chamber recalls that Bockarie and men under his command killed B.S. Massaquoi, Andrew Quee and four other civilians on suspicion that they were Kamajor collaborators.[2139] The Chamber is satisfied that these acts constituted unlawful killings as charged in Counts 4 and 5 of the Indictment.

4.2.1.1.2. Killing of Mr Dowi

1100. The Chamber finds that the killing of Mr. Dowi by AFRC/RUF rebels, after he attempted to prevent them from looting his freezer, constitutes murder as a crime against humanity.[2140] The perpetrators acted with a reckless disregard for civilian life, characteristic of the widespread and systematic attack against the civilian population of Sierra Leone at the time. The Chamber is further satisfied that a nexus existed between the killing and the armed conflict, as the control exercised by the AFRC and RUF over Kenema Town during the Junta period created a permissive environment in which the fighters could commit crimes with impunity. The Chamber accordingly finds that this killing also constitutes murder as a war crime, as charged in Count 5 of the Indictment.

4.2.1.1.3. Killings of suspected Kamajors

1101. The Chamber recalls that a number of individuals suspected of being Kamajors were killed by AFRC/RUF forces in Kenema Town, namely: three corpses were discovered behind a house on Mambu Street; a person was killed by Bockarie at the NIC building; and an alleged Kamajor boss was killed during "Operation No Living Thing."[2141]

1102. The Chamber recalls that during the conflict in Sierra Leone, the AFRC/RUF regularly killed civilians accused of being Kamajors as a deliberate strategy to terrorise the civilian population and prevent any support for their opponents. There is no evidence that the victims

[2138] Indictment, para. 47.
[2139] *Supra* paras 1078, 1079.
[2140] *Supra* para. 1060.
[2141] *Supra* paras 1057-1059, 1065.

were armed and there is no evidence that there was any fighting in Kenema Town at the time. The Chamber is satisfied that these individuals were civilians and not Kamajors. Accordingly, the Chamber finds that these persons were unlawfully killed, as charged in Counts 4 and 5 of the Indictment.

4.2.1.1.4. Killing of civilians accused of larceny

1103. The Chamber recalls that during the Junta period Bockarie ordered the killing of Bonnie Wailer and two others, and Bockarie or persons under his command executed two men suspected of stealing drugs from an NGO.[2142]

1104. The Chamber observes that these killings demonstrated the reckless disregard for civilian life characteristic of the widespread and systematic attack on the civilian population. Furthermore, we find that these killings were committed in order to preserve the control of the AFRC/RUF forces over Kenema Town and promote their image as the lawe enforcement authorities active at that time. The Chamber is thus satisfied that the killings formed part of the widespread and systematic attack against the civilian population and that the requisite nexus to the armed conflict existed. Accordingly, the Chamber finds that the killings of Bonnie Wailer, his two accomplices and the two individuals accused of theft of drugs constitute murder as charged in Counts 4 and 5 of the Indictment.

4.2.1.2. Tongo Field

4.2.1.2.1. Killing of civilian at Lamin Street and killing of Limba man

1105. The Chamber recalls that AFRC/RUF fighters killed one civilian at Lamin Street and one Limba man after he refused to surrender palm wine.[2143] The Chamber finds that these acts constitute unlawful killings, as charged in Counts 4 and 5 of the Indictment.

4.2.1.2.2. Killings of civilians at Cyborg Pit

1106. The Chamber finds that on three separate occasions, SBUs under the command of AFRC/RUF fighters killed over 20 civilians; 25 civilians; and 15 civilians at Cyborg Pit.[2144] On

[2142] *Supra* paras 1061-1064.
[2143] *Supra* paras 1080, 1081.
[2144] *Supra* paras 1082-1086.

another occasion, three civilians and two fighters were killed by AFRC/RUF fighters.[2145] The Chamber is satisfied that the killings of these civilians at Cyborg Pit constitute murder as charged under Counts 4 and 5 of the Indictment.

1107. On the basis of this evidence, the Chamber finds that AFRC/RUF members unlawfully killed 63 civilians at Cyborg Pit. The indiscriminate manner in which the perpetrators fired into mining pits containing civilian workers, the close proximity of the incidents and the similarities between the incidents establish that the perpetrators intended to kill on a massive scale. Accordingly, the Chamber finds that the killings at Cyborg Pit also constitute extermination as charged in Count 3 of the Indictment.

1108. In relation to the killing of two fighters, the Chamber finds that the essential elements of the general requirements for Counts 4 and 5 are not established, as the fighters were not civilians and as AFRC/RUF fighters, we find that their killing does not constitute a war crime.[2146]

4.2.2. Physical Violence (Count 11)

1109. The Indictment alleges that "between about 25 May 1997 and about 19 February 1998, in locations in Kenema District, including Kenema Town, members of the AFRC/RUF carried out beatings and ill-treatment of a number of civilians who were in custody."[2147] The Chamber notes that the Prosecution has not alleged that acts of mutilation, as charged in Count 10 of the Indictment, were committed in Kenema District.[2148]

4.2.2.1. Beating of TF1-122

1110. The Chamber recalls that TF1-122 was arrested and thoroughly beaten with a belt by AFRC/RUF members, resulting in serious physical injury.[2149] The Chamber finds that the beating of TF1-122 while in custody constitutes an inhumane act, as charged in Count 11 of the Indictment.

[2145] *Supra* para. 1087.
[2146] *Infra* para. 1452-1453.
[2147] Indictment, para. 63.
[2148] *Supra* para. 178.
[2149] *Supra* paras 1046, 1047.

4.2.2.2. Initial arrest of TF1-129

1111. The Chamber recalls the first arrest of TF1-129.[2150] The Chamber finds that Sesay personally and intentionally inflicted injury to the mental health of TF1-129 when he forcibly entered his office, aimed his gun at TF1-129 and then fired his gun between TF1-129's legs. In addition, the Chamber finds that the following acts inflicted serious physical injury on TF1-129: Captain Lion broke a bottle against his head; rebels kicked, spat at and urinated on TF1-129 while in the boot of the van; and rebels beat TF1-129 while he was moved around the Secretariat building.

1112. The Chamber is satisfied that, taken together, these acts are of comparable gravity to the crimes against humanity in Article 2 of the Statute. We accordingly find that the beating of TF1-129 constitutes an inhumane act, as charged in Count 11 of the Indictment.

4.2.2.3. Beating of rebel named Francis

1113. The Chamber recalls that Sesay ordered his bodyguards, Captain Lion and at least six rebels to beat a rebel named Francis.[2151] As Francis was a fighter, and the precise reasons why Sesay ordered that he be beaten are unclear, the Chamber is of the view that this act does not form part of the widespread or systematic attack against the civilian population of Sierra Leone. We therefore find that the general requirements of crimes against humanity have not been established by the Prosecution in respect of this beating, which does not then amount to an inhumane act as charged in Count 11 of the Indictment.

4.2.2.4. Beatings of suspected collaborators: January 1998

1114. Bockarie and other members of the RUF inflicted grave physical injuries on B.S. Massaquoi, Andrew Quee, Brima Kpaka, TF1-129, Paramount Chief Moinama Karmoh and four others who were arrested in late January 1998 on suspicion of being Kamajor collaborators.[2152] The Chamber finds that these beatings constitute inhumane acts, as charged in Count 11 of the Indictment.

4.2.2.5. Beatings of suspected collaborators: February 1998

[2150] *Supra* paras 1048-1053.
[2151] *Supra* paras 1049, 1050.
[2152] *Supra* paras 1066-1079.

1115. Further mistreatment of B.S. Massaquoi and five other civilian detainees occurred on 6 February 1998 when these individuals were re-arrested.[2153] The Chamber is satisfied that the treatment of these civilians by AFRC/RUF rebels, including by Bockarie, resulted in great suffering and serious physical injury, and amounted to inhumane acts as charged in Count 11 of the Indictment.

4.2.2.6. "Flogging" of the Police Commissioner and CPO

1116. The Chamber recalls that Sesay and his subordinates "flogged" and "humiliated" the Police Commissioner and the Chief Police Officer in Kenema.[2154] The Chamber recalls that proof of an inhumane act requires the Prosecution to demonstrate that the physical or mental injury inflicted on the victim is of sufficiently similar severity to the other crimes against humanity in Article 2 of the Statute.

1117. The Prosecution did not adduce evidence as to the actual physical or mental injuries, if any, inflicted by Sesay and his men on the victims. The witnesses, neither of whom had spoken directly to the victims about the event, did not clarify what the terms "flogging" and "humiliation" entailed, apart from explaining that being forcibly taken away with Sesay amounted to humiliation. In the absence of evidence as to the nature and severity of the "flogging," the Chamber finds that this conduct is not sufficiently grave to constitute an inhumane act, as charged in Count 11 of the Indictment.

4.2.3. Enslavement (Count 13)

1118. The Indictment alleges that between about 1 August 1997 and about 31 January 1998, the AFRC/RUF forced an unknown number of civilians to mine for diamonds at Cyborg Pit in Tongo Field.[2155]

1119. The Chamber's Factual Findings concerning mining in Tongo Field contain ample evidence that the AFRC/RUF troops intentionally exercised powers attaching to the right of ownership over civilians.[2156] Specifically, civilians were assembled and given orders to mine by AFRC/RUF Commanders, including by Bockarie. Civilians were forcibly captured from

[2153] *Supra* paras 1072-1076.
[2154] *Supra* paras 1054-1056.
[2155] Indictment, para. 70.

surrounding villages and brought to the mines, often in physical restraints such as ropes. Civilians were forced to labour in the presence of armed guards, who frequently beat or killed those who attempted to escape or committed other perceived breaches of the mining rules. Civilians were either not compensated at all for their work or given woefully insufficient compensation in the form of meagre food items. Civilians were treated cruelly through deprivation of food and medical assistance. Civilians were forced to work naked, enabling the guards to exercise psychological control over them. Civilians were not permitted to move freely on the mining sites, but rather were required to obtain permission.

1120. Although the absence of consent is not an element of the crime of enslavement, the Chamber finds that the conditions in which civilians worked at the mines cumulatively created an atmosphere of terror in which genuine consent was not possible. While the Chamber does not discount the possibility raised by the Sesay Defence that there may have been civilians who mined voluntarily, the Chamber does not accept as credible evidence that no civilians were forced to mine in Kenema District.[2157]

1121. Rather, the Chamber is satisfied from the totality of the evidence that AFRC/RUF forces intentionally deprived hundreds of civilians of their liberty in an environment characterised by systematic violence and coercion. The AFRC/RUF fighters in Tongo Field, through the conduct recounted in the Factual Findings, exercised powers attaching to the right of ownership over civilians. The Chamber thus finds that these acts of forced mining by civilians constitute enslavement as charged in Count 13 in respect of Cyborg Pit in Tongo Field.

4.2.4. Acts of Terrorism (Count 1)

1122. The Prosecution alleges that members of the AFRC/RUF committed unlawful killings, acts of physical violence and enslavement in Kenema District as part of a successful campaign to terrorise the civilian population of Sierra Leone.[2158]

4.2.4.1. Kenema Town

[2156] *Supra* paras 1088-1095.
[2157] *See* Sesay Final Trial Brief, paras 581-584 and 590-596, and witness testimony cited therein.
[2158] Indictment, para. 44.

1123. The Chamber has found that a number of violent crimes were committed in Kenema Town against victims suspected of being Kamajors or collaborating with the Kamajors, specifically:

(i) the corpses behind a house on Mambu Street;[2159]

(ii) the person killed at the NIC building;[2160]

(iii) the alleged Kamajor boss killed during "Operation No Living Thing,"[2161]

(iv) the killing of B.S. Massaquoi, Andrew Quee and four other civilians;[2162]

(v) the beatings and ill-treatment inflicted on TF1-129 by Sesay, Captain Lion and other AFRC/RUF rebels during his first arrest;[2163] and

(vi) the beatings of suspected collaborators in January and February 1998.[2164]

1124. We find that it is evident from the victims' occupations, the fact that the ICRC came to enquire about TF1-129's arrest and the fact that the Kamajors attempted to rescue the detainees from the Kenema Police Station, that a number of the victims were prominent members of civil society and were targeted on this account. Moreover, AFRC/RUF fighters publicised these crimes, notably by impaling B.S. Massaquoi's severed head on a pole in Kenema Town, using a civilian's intestines as a checkpoint, and singing as they took a captured civilian to be killed.

1125. The Chamber is satisfied that these crimes were intended to illustrate the gruesome repercussions of collaborating or being perceived to collaborate with enemies of the RUF and so to terrorise and subdue the population. The Chamber thus finds that the crimes were committed with the specific intent to terrorise the civilian population. Accordingly, the Prosecution has established the elements of Count 1 in respect of these crimes in Kenema Town and we find that they constitute acts of terrorism.

1126. The Chamber observes that individual acts of violence, even when committed in the context of a campaign to terrorise the civilian population, may be committed without the

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[2159] *Supra* para. 1057.
[2160] *Supra* para. 1059.
[2161] *Supra* para. 1065.
[2162] *Supra* para. 1078.
[2163] *Supra* para. 1052.

primary purpose of furthering this campaign. Although the unlawful killing of Mr Dowi and the beating of TF1-122 are acts of violence directed against civilians, these acts were committed in response to conduct that aggravated the perpetrators: in both cases the victims intervened to prevent looting. Accordingly, the Chamber is not satisfied beyond reasonable doubt that the perpetrators of the unlawful killing of Mr. Dowi and the beating of TF1-122 intended by their acts to spread terror among the civilian population in general. The Chamber finds that the elements of Count 1 have not been established and concludes that these acts do not constitute acts of terrorism.

4.2.4.2. Tongo Field

1127. The killing at Lamin Street was a wilful act of violence directed against a civilian.[2165] The Chamber finds that the shooting of one civilian in a crowd at a public demonstration displays in such circumstances the specific intent to spread terror among the civilians present and the civilian population of Tongo Field in general. This is especially so in this context where civilians were protesting against the AFRC/RUF forces. The Chamber is satisfied that the perpetrators intended to impart a clear public message that such protests would be met with violence. The Chamber thus finds this killing to constitute an act of terrorism as charged in Count 1 of the Indictment.

1128. In relation to the killing of the Limba man, the Chamber considers that the perpetrators demonstrated a wanton disregard for human life typical of the AFRC/RUF forces.[2166] However, the Prosecution has not adduced sufficient evidence to demonstrate that the perpetrators of this apparently isolated crime specifically intended to spread terror among the civilian population of Tongo Field. The Chamber accordingly does not find this killing to constitute an act of terrorism as charged in Count 1 of the Indictment.

1129. In the context of the widespread enslavement at Tongo Field, we find that the perpetrators of the killings of civilians at Cyborg Pit specifically intended by their conduct to spread terror among the civilian population in order to create an environment conducive to

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[2164] *Supra* para. 1069.
[2165] *Supra* para. 1080.
[2166] *Supra* para. 1081.

absolute obedience.[2167] The Chamber thus finds that the multiple incidents of violence at Cyborg Pit involving the killings of over twenty civilians; twenty-five civilians; fifteen civilians and three civilians constitute acts of terrorism as charged in Count 1 of the Indictment.

1130. Moreover, the Chamber is satisfied beyond reasonable doubt that the enslavement of hundreds of civilians by AFRC/RUF fighters at Cyborg Pit was an act of violence committed with the specific intent to spread terror among the civilian population.[2168] The Chamber finds that the massive scale of the enslavement, the indiscriminate manner in which civilians were enslaved and the brutal treatment of the victims were circumstances capable of instilling, and intending to evoke, extreme fear in the civilian population of Tongo Field. The Chamber accordingly finds that the Prosecution has established the necessary elements of Count 1 in relation to the enslavement of civilians by AFRC/RUF forces at Cyborg Pit and that this crime constitutes an act of terrorism, as charged in Count 1 of the Indictment.

4.2.5. Collective Punishment (Count 2)

1131. The Prosecution further alleges that members of the AFRC/RUF committed unlawful killings, acts of physical violence and enslavement in Kenema District to collectively punish the civilian population for allegedly supporting President Kabbah's Government or for failing to provide sufficient support to the AFRC/RUF.[2169]

4.2.5.1. Kenema Town

1132. The Chamber has found that a number of violent crimes were committed in Kenema Town against victims suspected of collaborating with the Kamajors. These crimes are:

(i) the corpses of three persons killed and discovered behind a house on Mambu Street;[2170]

(ii) the person killed at the NIC building;[2171]

(iii) the alleged Kamajor boss killed during "Operation No Living Thing", [2172]

[2167] *Supra* paras 1082-1087.
[2168] *Supra* paras 1088-1095.
[2169] Indictment, para. 44.
[2170] *Supra* para. 1057.
[2171] *Supra* para. 1059.
[2172] *Supra* para. 1065.

(iv) the killing of B.S. Massaquoi, Andrew Quee and four other civilians;[2173]

(v) the beatings and ill-treatment inflicted on TF1-129 by Sesay, Captain Lion and other AFRC/RUF rebels during his first arrest;[2174] and

(vi) the beatings of suspected collaborators in January and February 1998.[2175]

1133. The Chamber finds that the victims of these crimes were targeted in order to punish them for allegedly providing assistance to enemies of the RUF, an action for which some or none of them may or may not have been responsible. The Chamber is therefore satisfied that these crimes constitute collective punishment, as charged in Count 2 of the Indictment.

1134. The Chamber finds that the victims of the other crimes committed in Kenema Town – namely TF1-122 and Mr Dowi – were not targeted to punish them collectively for perceived wrong-doing. Accordingly, the Chamber finds that the beating of TF1-122 and the killing of Mr. Dowi in Kenema Town do not satisfy the essential elements of Count 2 and does not constitute collective punishment.

4.2.5.2. Tongo Field

1135. The Prosecution has not adduced evidence to establish that the enslavement of an unknown number of civilians at Cyborg Pit and the killings in Tongo Field constituted punishments indiscriminately imposed on the victims to collectively punish them for supporting the Kabbah Government or failing to support the AFRC/RUF. The Chamber therefore finds that the essential elements of collective punishment as charged under Count 2 are not established in respect of these crimes.

5. Crimes in Kono District

5.1. Factual Findings on the Crimes in Kono District

5.1.1. Background

1136. Kono District is in the east of Sierra Leone and its major town is Koidu.[2176] Koidu

[2173] *Supra* para. 1078.
[2174] *Supra* para. 1052.
[2175] *Supra* para. 1069.

Town was a strategic location for the RUF as it is situated on a main route to the RUF stronghold of Kailahun District.[2177] Control over Kono District was strategically and economically critical to all fighting factions during the armed conflict, as Kono District shares a border with Guinea and is the location of most of Sierra Leone's diamond mines.

1137. The RUF leadership repeatedly emphasised the importance of Kono to the RUF rank and file. RUF members were ordered to retain control of Kono for strategic reasons, including its utility as a defensive stronghold and the potential for mineral exploitation.[2178] Johnny Paul Koroma also ordered AFRC troops to retain Kono as a Junta stronghold.[2179]

1138. After ECOMOG forces attacked Freetown in February 1998, the AFRC/RUF forces retreated through Makeni towards Kono. AFRC/RUF fighters looted property from civilians as they went, a practice sanctioned by their Commanders as "Operation Pay Yourself."[2180] The Junta forces subsequently attacked Koidu Town and managed to largely secure it by early March 1998.[2181] However, their occupation was short-lived, as they were pushed out by ECOMOG forces in early April 1998.[2182] AFRC and RUF troops remained based around Koidu, effectively making Koidu an ECOMOG enclave in rebel held territory.

1139. In August 1998, Superman led the RUF in the Fiti Fata Mission to recapture Koidu. The mission failed and the RUF sustained significant casualties.[2183] In December 1998, Sesay commanded and led a successful attack on Kono District and recaptured Koidu.[2184] Kono District remained largely under RUF control throughout the remainder of the Indictment

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[2176] We note that Koidu Town is also referred to simply as Kono, and some witnesses used the two names interchangeably.
[2177] Transcript of 19 January 2005, TF1-071, p. 49.
[2178] Transcript of 19 January 2005, TF1-071, pp. 49-50; Transcript of 8 November 2005, TF1-366, p. 6 (CS).
[2179] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, pp. 82-83, 86-87.
[2180] Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 81; Transcript of 18 July 2005, TF1-361, p. 122; Transcript of 7 November 2005, TF1-366, pp. 108-109 (CS). *See supra* para. 783.
[2181] Transcript of 9 May 2007, Issa Sesay, pp. 36-38; *See also* Transcript of 8 November 2005, TF1-366, pp. 5-7 (CS); Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, p. 3.
[2182] Transcript of 10 July 2006, TF1-045, p. 45.
[2183] Transcript of 14 April 2008, Morris Kallon, pp. 62-63. *See also* Transcript of 16 May 2007, Issa Sesay, p. 14; Transcript of 8 November 2005, TF1-366, pp. 78-82 (CS). Fiti-Fata in Mende means "anything is plenty", or that when things are plenty, you may use them any way you wish. Fiti means 'abundance' and Fata means 'the way you use it'. *See* Transcript of 24 April 2008, DMK-087, pp. 39-44.
[2184] Transcript of 9 November 2005, TF1-366, pp. 2-12 (CS); Transcript of 17 May 2007, Issa Sesay, pp. 86-89; Transcript of 9 November 2007, DIS-281, pp. 71-72; Transcript of 12 February 2008, DIS 127, pp. 61-64.

period.[2185]

5.1.2. Koidu Town

5.1.2.1. Looting and Burning upon arrival in Koidu

1140. Upon their arrival in Koidu, the AFRC/RUF forces occupied the entire township and started searching for money, ammunition and vehicles.[2186] They looted property and burned down houses.[2187] TF1-366, who participated in the operation in Kono, observed that whatever the rebels saw, they would take. TFI-366 looted property including food, a video player, and a vehicle that he used to transport a gun.[2188] The RUF officially approved looting, as they used the looted "government properties"[2189] to finance the war, including the purchase of ammunition.[2190]

1141. The day after the capture of Koidu, Johnny Paul Koroma, Superman, TF1-366, Sesay, Kallon and other AFRC/RUF Commanders assembled a meeting at Kimberlite.[2191] Johnny Paul Koroma addressed the Commanders and ordered that all houses in Koidu Town should be burned to the ground so that no civilian would be able settle there as the civilians were not supporters of the Junta. Sesay reiterated this message, stating that the civilians had proved to be traitors and that they should not be tolerated.[2192]

1142. Immediately after the meeting, AFRC/RUF members started carrying out this order, driving out civilians and burning down houses, stating that they did not want to see any civilians.[2193] The rebels burned the whole of Koidu and looted civilian property, including

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[2185] Exhibit 302, Operational Order No. 3, January 2000, p. 3406.
[2186] Transcript of 8 November 2005, TF1-366, p. 5 (CS).
[2187] Transcript of 20 April 2005, TF1-362, p. 40; Transcript of 7 November 2005, TF1-366, p. 110 (CS); Transcript of 20 July 2006, TF1-371, p. 69; Transcript of 29 February 2008, DIS-089, p. 92. *See also* Transcript of 22 July 2004, TF1-217, pp. 32-33.
[2188] Transcript of 7 November 2005, TF1-366, pp. 109-110 (CS)
[2189] "Government property" was looted property that was deemed to belong to the RUF 'government', meaning that rebels were not permitted to keep it for themselves, but rather had to hand it over to their Commanders. *See* Transcript of 11 April 2005, TF1-141, pp. 110-111.
[2190] Transcript of 18 July 2005, TF1-361, p. 123 (CS); Transcript of 8 November 2005, TF1-366, pp. 5-7.
[2191] Transcript of 8 November 2005, TF1-366, pp. 4-5 (CS); Transcript of 14 November 2005, TF1-366, p. 18 and pp. 23-24 (CS).
[2192] Exhibit 119, AFRC Transcript of 18 May 2005, TF1-334, pp. 3-9.
[2193] Exhibit 119, AFRC Transcript of 18 May 2005, TF1-334, pp. 3-9; Transcript of 20 July 2006, TF1-371, p. 69; Transcript of 22 July 2004, TF1-217, p. 10.

property from TF1-217's house.[2194] TF1-217 fled with his family and many other civilians to Wendedu, about two miles from Koidu.[2195]

1143. TF1-141 was captured in Koidu Town during the February/March attack on Koidu and held captive at the Opera roundabout. TF1-141 was 12 years old at the time. While at Opera roundabout, he saw houses being burned in Koidu.[2196] When TF1-141 and other captured civilians were moved by the rebels to the Guinea Highway, he observed that all the houses at Pimbi Lane and other main streets in Koidu had been set on fire.[2197]

1144. Commanders present in Koidu during the burning included Bazzy, Papa Hassan Bangura, Superman, Eldred Collins and Kallon. The Commanders did not prevent the burning or warn any of the civilians; rather, they participated in it.[2198] Civilians complained to Kallon and Superman, who were Commanders on the ground, about the burning, harassment and looting of their property by the Junta forces. However, the Commanders did not take any action in response to the complaints.[2199]

5.1.2.2. Looting of Tankoro bank

1145. A group of AFRC and RUF fighters in Koidu broke into a bank in Tankoro in March 1998 and carried away millions of leones in empty rice bags. Dennis Koker, an MP, saw over 18 rice bags containing money being taken away from the bank during the robbery.[2200] When Superman became aware of this, he ordered that those involved be brought to him. Superman took some of the stolen funds and gave the rest to TF1-371 to take to Bockarie.[2201]

5.1.2.3. Killings during attack on Koidu

1146. During the February/March attack on Koidu by AFRC/RUF forces, TF1-141 saw corpses of both Kamajors and civilians on the street near the Opera roundabout, where he was

[2194] Transcript of 22 July 2004, TF1-217, pp. 8, 11.
[2195] Transcript of 22 July 2004, TF1-217, p. 11.
[2196] Transcript of 11 April 2005, TF1-141, pp. 82-85.
[2197] Transcript of 11 April 2005, TF1-141, pp. 88-90.
[2198] Transcript of 20 May 2005, AFRC Trial, TF1-334, pp. 8-11.
[2199] Transcript of 8 November 2005, TF1-366, p. 43 (CS).
[2200] Transcript of 28 April 2005, Dennis Koker, p. 46.
[2201] Transcript of 20 July 2006, TF1-371, pp. 77-78. *See also* Exhibit 44, Letter from Major A.S. Kallon, Chairman, Joint Security, Kono, to Colonel Sam Bockarie, 6 May 1998, pp. 3124-3126; Transcript of 28 April 2005, Dennis Koker, p. 46, Transcript of 22 April 2008, DMK-087, pp. 114-116; Transcript of 10 May 2007, Issa Sesay, p. 10.

being held captive.[2202] An unknown number of civilians were killed by Junta forces at other locations in Koidu during this attack.[2203]

5.1.2.4. Killing of civilians by Rocky and his men

1147. In April 1998, during the AFRC/RUF retreat from Koidu, RUF Commander Major Rocky and a group of rebels arrived at the Sunna Mosque in Koidu and captured a large group of civilians. The rebels were dressed in ECOMOG uniforms in order to deceive the civilians as to their affiliation. The civilians, believing the rebels were ECOMOG soldiers, greeted them with thanks and praise.[2204] The rebels took the civilians to a valley at Hill Station in Koidu and separated them into three groups: men, women and children.[2205] Rocky said to the assembled group:

> Those of you who were clapping today, let me tell you now [...] We are Junta rebels [...] As you see in Kono now, we are now in control. We own this place now [...] We are coming to send you to Tejan Kabbah for you to tell him that we own here.[2206]

1148. TF1-015 was one of the captives and the rebels called him forward and ordered him to pray. He did so and then Rocky took a machine gun and opened fire into the crowd, killing around 30 to 40 civilians.[2207] The heads of the civilians killed by Rocky were severed by "small, small" rebels, whom TF1-015 estimated to be younger than 16.[2208]

1149. Soldiers then brought forward a 15 year old boy and place his right hand on a stick. He

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[2202] Transcript of 11 April 2005, TF1-141, pp. 82-85.
[2203] Transcript of 19 January 2005, TF1-071, pp. 45-52; Transcript of 21 January 2005, TF1-071, pp. 47-57 (CS); Transcript of 27 January 2005, TF1-015, pp. 89-96, 116; Transcript of 7 April 2005, TF1-263, pp. 91-98; Transcript of 8 November 2005, TF1-366, pp. 7-23 (CS); Transcript of 18 April 2008, Morris Kallon, pp. 85-87
[2204] Transcript of 27 January 2005, TF1-015, pp. 113-116, 125, 128.
[2205] Transcript of 27 January 2005, TF1-015, pp. 121-123.
[2206] Transcript of 27 January 2005, TF1-015, p. 123.
[2207] The witness did not use the term machine gun, but rather described the weapon as "bigger than those other guns [...] and where the bullet [sic] pass, it has a long belt, like a chain. A lot of bullets hung on it": Transcript of 27 January 2005, TF1-015, p. 127. TF1-015 testified that Rocky claimed to have killed 101 people: Transcript of 27 January 2005, TF1-015, pp. 135-136. TF1-071 was in Koidu at the time and he was shown the bodies by TF1-015. He estimated that he saw 30 to 40 bodies of civilians: Transcript of 21 January 2005, TF1-071, pp. 47-53 (CS). The Chamber notes that TF1-071 testified that this event took place in November 1998, but due to his identification of TF1-015 and the fact that he states that the killing took place during the retreat from Koidu Town to Meiyor, the Chamber is satisfied that his recollection of the date is mistaken and the events he described took place in April 1998 when ECOMOG recaptured Koidu Town. TF1-078 was told of this event by TF1-015, and TF1-078 testified that around 60 civilians were killed: Transcript 25 October 2004, TF1-078, pp. 15-18. Exercising caution and cognisant that the benefit of the doubt must go to the Accused, the Chamber finds that around 30 to 40 civilians were executed by Rocky.

pleaded with them to leave him alone, but they amputated his right hand at the wrist, and then also his left hand at the wrist. The rebels then placed his left leg on the stick and amputated it at the ankle. They then amputated the right leg at the ankle and threw the boy into a latrine pit. He was still alive when the rebels and TF1-015 departed, as his cries were audible.[2209]

1150. TF1-015 was ordered to accompany the rebels to the Sunna Mosque. Upon arrival at the Mosque, he met 30 Commanders, including Kallon and Colonel Rambo.[2210] Colonel Rambo was not happy that TF1-015 was still alive and proposed that the other Commanders vote on whether or not he should be killed. The voting was evenly divided, with 15 votes on each side. Kallon was amongst those who voted for his death. As a result of the stalemate, the Commanders asked Sylvester Kieh, a young fighter, to cast the deciding vote. He voted in favour of TF1-015, saving his life.[2211]

1151. When DIS-188 was in Pendembu in 1998, he received information about CO Rocky killing civilians. DIS-188 reported the matter to Bockarie who summoned Superman, Kallon and Rocky to Buedu.[2212]

5.1.2.5. Rapes in Koidu

1152. TF1-217 was in Koidu during the attack by the AFRC/RUF forces in February/March 1998. The rebels forcibly entered civilian houses during the night on a regular basis and stabbed people, took property and raped women. On those mornings when news spread of such events from the previous evenings, TF1-217 would go to the local hospital. He stated that:

> [On arrival at the hospital] we met young women that were raped and young people – men that were damaged. And it happened many times.[2213]

1153. AFRC/RUF fighters also regularly raped women who were being used to carry loads in the Guinea Highway area of Koidu in March 1998.[2214]

5.1.2.6. Sexual Slavery and 'Forced Marriages'

[2208] Transcript of 27 January 2005, TF1-015, pp. 135-136.
[2209] Transcript of 27 January 2005, TF1-015, pp. 129-132.
[2210] Transcript of 27 January 2005, TF1-015, p. 128.
[2211] Transcript 27 January 2005, TF1-015, pp. 137-141, 144-149.
[2212] Transcript of 26 October 2007, DIS-188, p. 111.
[2213] Transcript of 22 July 2004, TF1-217, p. 10.
[2214] Transcript of 11 April 2005, TF1-141, pp. 89-95.

1154. In February and March 1998, as the Junta troops travelled to Kono, many civilian women and girls from villages along the road were forcibly abducted by the fighters. Some women were forced into marriage, used as domestics to do cooking or housework, and others were raped.[2215]

1155. Following the capture of Koidu in February/March 1998, TF1-071 saw women being forcibly taken from their husbands, parents and home villages, particularly from Sewafe to Koidu. Some were raped and others, especially the beautiful ones, became the wives of the Commanders. These women were under the control of the Commanders and were responsible for cooking for them and "serving them as their wives," meaning that the rebels used the women for sexual purposes.[2216]

5.1.2.7. Burning during retreat from Kono

1156. About one month after the rebels occupied Koidu, ECOMOG forces regrouped in order to recapture Koidu and made advances from Sewafe heading to Koidu. Superman reported the ECOMOG advance to Bockarie and informed him that his men did not want to fight. Upon hearing this, Bockarie ordered Superman to burn down the houses of all fighters who refused to fight.[2217]

1157. When the ECOMOG forces entered Koidu sometime in mid-April 1998, members of the AFRC/RUF, including the Special Task Force, were torching houses in Koidu.[2218] TF1-041 reported the burning to Kallon, who was at Hill Station on the Guinea Highway. Kallon's only response was that ECOMOG were advancing and he did not take any action.[2219] The burning continued until the troops pulled out of Koidu, by which point it was completely destroyed.[2220] TF1-071 testified that Koidu looked like a 'ghost town'.[2221]

1158. As the rebels retreated from Koidu, they destroyed the Sewafe Bridge so that

[2215] Transcript of 19 January 2005, TF1-071, pp. 28-40; Transcript of 11 April 2005, TF1-141, pp. 83-84, 89-95; Transcript of 28 April 2005, Denis Koker, pp. 46-47; DIS-089, Transcript 29 February 2008, p. 93.
[2216] Transcript of 19 January 2005, TF1-071, pp. 37-39; Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 3-6.
[2217] Transcript of 16 May 2007, Issa Sesay, pp. 14-15.
[2218] Transcript of 17 July 2006, TF1-041, pp. 40, 45-46.
[2219] Transcript of 10 July 2006, TF1-041, p. 46; Transcript of 17 July 2006, TF1-041, pp. 41-42.
[2220] Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 8-9, 29, 31.
[2221] Transcript of 19 January 2005, TF1-071, pp. 51-52.

ECOMOG forces would be unable to defend the town.[2222]

5.1.3. Tombodu

5.1.3.1. Burning of civilian homes

1159. After ECOMOG forces had driven the rebels from Freetown in February 1998, Bockarie ordered that houses in Tombodu should be set on fire. He stated that instead of supporting the Junta forces, the civilians were running away into the bush, and they would not need their houses there.[2223] Staff Alhaji read this order to TF1-012, who was being held in captivity by the RUF. TF1-012 saw 36 houses burned that evening.[2224] The burning in Tombodu was an operation organised jointly between the AFRC and the RUF.[2225]

1160. After the announcement that ECOMOG forces had arrived in Kono in mid-April 1998, TF1-197 saw houses on fire in Tombodu.[2226] When TF1-071 arrived in Tombodu in July 1998, all of the houses had already been burned down by Col. Savage.[2227] Tombodu, like Koidu, looked like a "ghost town" with very few houses left standing.[2228]

5.1.3.2. Beating and Looting of civilian petty traders

1161. During the period from February to March 1998, civilians inhabiting the surrounding area of Tombodu set up small booths in the bush in order to sell items. AFRC/RUF rebels regularly harassed the civilians, beat them and threatened to kill them if they did not surrender diamonds, palm oil, rice and money.[2229]

1162. On one occasion, the rebels blindfolded a number of the civilians, beat them mercilessly with sticks and gun butts, and held them down in nests of black ants. The witness explained:

[2222] Transcript of 12 July 2005, TF1-361, pp. 2-11; Transcript of 25 July 2005, TF1-360, p. 11; Transcript of 26 July 2005, TF1-360, p. 109; Transcript of 8 November 2005, TF1-366, pp. 43-45; Transcript of 17 January 2008, DIS-214, p. 109; Transcript of 22 April 2008, DMK-161, p. 56.
[2223] Transcript of 2 February 2005, TF1-012, pp. 17-18.
[2224] Transcript of 2 February 2005, TF1-012, pp. 18-19.
[2225] Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 16-17.
[2226] Transcript of 21 October 2004, TF1-197, p. 93.
[2227] Transcript of 21 January 2005, TF1-071, p. 98. Col. Savage was also sometimes referred to as Staff Sergeant: Transcript of 14 October 2004, George Johnson, p. 43.
[2228] Transcript of 21 January 2005, TF1-071, p. 98.
[2229] Transcript of 21 October 2004, TF1-197, pp. 72-74.

> At that time, after beating us mercilessly, they said if we don't produce the money they are going to kill us [...] I was so beaten that I was bleeding from my nose, through my eyes. Then they began firing between our legs.[2230]

1163. In order to prevent the rebels from further mistreating the other civilians, TF1-197 told the rebels that he operated one of the businesses. The rebels then left the other civilians and beat TF1-197 with their sticks and stabbed him in the head, only stopping when he produced money and goods. TF1-197 retains a scar on his head from the stabbing.[2231]

1164. Rebels forcibly seized from TF1-197 a bicycle, about Le 500.000 and other items that he had for sale, primarily cigarettes. TF1-197 was told that the leader of these rebels, named Musa, reported to Staff Alhaji. One of the rebels, however, referred to his boss as Commando. Some of the rebels, including Musa, were dressed in full military fatigues, while others wore mixed civilian and military clothing.[2232]

5.1.3.3. Killings by Savage and Staff Alhaji

1165. Between February and March 1998, about 200 civilians were executed in Tombodu on the orders of AFRC Commander Savage. The civilians were killed for cheering for ECOMOG troops. The bodies were then dumped in a pit, which was known as "Savage Pit". During this period, TF1-167 saw many dead bodies in the pit and others in front of the court building in Tombodu.[2233] In another incident, Savage and his men beheaded about 47 civilians and dumped their bodies into a diamond pit.[2234]

1166. Some time in March 1998, TF1-197 and eight other captured civilians were kept in a cell over night in Tombodu on the orders of Staff Alhaji's boss. TF1-197 heard people crying outside "They're killing us."[2235] The next day, rebels took TF1-197 and the other civilians from the cell to a park where they encountered three corpses covered in blood. The rebels ordered the civilians to dispose of the corpses in a nearby pit filled with water. TF1-197 was later

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[2230] Transcript of 21 October 2004, TF1-197, p. 74.
[2231] Transcript of 21 October 2004, TF1-197, pp. 74-76.
[2232] Transcript of 21 October 2004, TF1-197, pp. 72-79.
[2233] Transcript of 14 October 2004, George Johnson, pp. 131-133.
[2234] Transcript of 2 February 2005, TF1-012, pp. 19-22; Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 14-15.
[2235] Transcript of 21 October 2004, TF1-197, p. 89.

informed that this pit was called "Savage Pit".[2236]

1167. During the same period, Savage killed a group of male and female civilians by locking them inside a house and setting it on fire.[2237]

1168. When TF1-304 saw "Savage Pit", it contained a large number of human heads and many skeletons.[2238] When TF1-263 went with Superman's group from Kono District to Kenema District they stopped at Tombodu, where TF-263 saw "Savage Pit" and was told it was where Savage and his men killed people. He saw four corpses in "Savage Pit".[2239]

1169. DIS-281 received reports about killings by Savage.[2240] In September 1998, Sesay heard about the killings by Savage in Tombodu.[2241] At a muster parade at the Tankoro Police Station, at which Kallon was present, the killings and amputations of civilians by Savage in Tombodu were discussed, but no punative action was taken.[2242]

5.1.3.4. Killing of Chief Sogbeh

1170. In February/March 1998, a Town Chief known as S. E. Sogbeh was shot and killed at the Tombodu Bridge mining site, on the orders of Officer Med. He was killed because he refused an order to mine on the basis that he was unable to work after being flogged by the rebels. Chief Sogbeh's body was thrown in the water. Officer Med ordered that anyone who refused to work should be shot. After killing Chief Sogbeh, the rebels said to the civilians at the mine: "Anybody who refused [sic] to do this work, this will be your end." [2243]

5.1.3.5. Rape of a woman by Staff Alhaji

1171. In Tombodu, in mid-April 1998, TF1-197 watched Staff Alhaji point a gun at the head of a woman carrying a child and command her to put the child down and undress. The woman did so and Staff Alhaji "began pointing and touching the private of the woman. Then he told the woman to lie down [...] and he, Alhaji, came and used the woman [...] he had sex with the

[2236] Transcript of 21 October 2004, TF1-197, pp 89-90. *See also* Transcript of 2 February 2005, TF1-012, p. 21.
[2237] Transcript of 2 February 2005, TF1-012, p. 19.
[2238] Transcript of 12 January 2005, TF1-304, pp. 35-36.
[2239] Transcript of 6 April 2005, TF1-263, pp. 43-45.
[2240] Transcript of 12 November 2007, DIS-281, p. 21, Transcript of 21 July 2006, TF1-371, pp. 4-5.
[2241] Transcript of 17 May 2007, Issa Sesay, p. 15-16.
[2242] Transcript of 19 January 2005, TF1-071, pp. 45-52; Transcript of 14 April 2008, Morris Kallon, p. 122.

woman."[2244]

5.1.3.6. Amputations by Staff Alhaji's men

1172. In April 1998 at Number 11 Camp in Tombodu, Staff Alhaji and the rebels amputated the hands of three civilians: Mohamed S. Kamara, Muktar Jalloh and Mr. Bah.[2245]

5.1.3.7. Floggings by Staff Alhaji and his men

1173. After news of the ECOMOG force's arrival in Kono, TF1-197 and his younger brother were captured by rebels under the command of Staff Alhaji around Tombodu. They were tied to a mango tree and flogged repeatedly with a bundle of wires. Rebels would flog them, rest, and then flog them again, while Staff Alhaji watched from the veranda of a nearby house. At one point a Limba man was also brought to Staff Alhaji and beaten.[2246]

5.1.4. Wendedu

5.1.4.1. Killing of female Nigerian civilian

1174. In May 1998, Waiyoh, a Nigerian female civilian who had lived in Kono District for 20 years, was a resident in the camp for civilians at Wendedu. The camp was situated only two or three kilometres from an ECOMOG controlled area. The majority of ECOMOG soldiers in Kono were Nigerian, and Kallon was concerned that if Waiyoh escaped she would disclose information on RUF positions to ECOMOG. On one occasion when Kallon visited the Wendedu camp, he questioned CO Rocky about Waiyoh, stating that he considered her a threat. He raised the issue on a subsequent visit, asking Rocky if he was still keeping "enemies" of the RUF in the camp.

1175. Following a visit by Kallon's bodyguards to the camp to enquire again about Waiyoh, Rocky ordered one of his bodyguards, Sergeant Kanneh, to execute her. At the time, Kallon was senior to Rocky, although he was not Rocky's Commander. Rocky reported to Superman,

[2243] Transcript 20 July 2004, TF1-199, pp. 80-81.
[2244] Transcript of 21 October 2004, TF1-197, pp. 86-87.
[2245] Transcript of 8 July 2005, TF1-212, pp. 97-98.
[2246] Transcript of 21 October 2004, TF1-197, pp. 80-87.

who was the RUF Battle Group Commander.[2247]

5.1.4.2. Killing of Sata Sesay's family

1176. Upon arriving in Wendedu in June 1998, an 11 year old girl named Sata Sesay informed TF1-071 that eight of her family members had been killed by KS Banya. TF1-071 asked KS Banya why he killed these civilians. KS Banya responded that the deceased civilians were ECOMOG spies and that Superman had instructed him "long ago" that any civilians found in the bush were to be treated as enemies. At that time KS Banya was the ground Commander at Wendedu. Although he was a former SLA soldier, he was taking orders from Superman.[2248]

5.1.4.3. Beating of TF1-015

1177. TF1-015 was a civilian captured by rebels near Koidu in March 1998 and taken to the Wendedu camp by Major Rocky, an RUF Commander.[2249] On one occasion during the period from February to June 1998, Captain Banya shoved a board into TF1-015's mouth and knocked out some of his teeth. He also hammered on the board with the butt of his gun while the board was in TF1-015's mouth. As a result, TF1-015 still feels pain and is unable to chew food.[2250]

5.1.4.4. Sexual Slavery and 'Forced Marriages'

1178. After ECOMOG and the Kamajors forces retook control of Koidu in April 1998, TF1-217 fled to Wendedu along with many other civilians. The AFRC/RUF were also in Wendedu and one day he saw five young girls, aged between about 13 and 16 years of age, sitting inside vehicles with AFRC/RUF rebels. One of the girls was weeping. One of the Junta boys then captured TF1-217's 16 year old sister and declared "This is Captain Bai Bureh's wife". Captain Bai Bureh said "Yes, this is a beautiful lady."[2251] Among the other Commanders present, TF1-217 also recognised Lieutenant Jalloh. TF1-217 begged for the release of his sister, but the rebels said "Your life, your sister, which of the two do you want?" TF1-217 left his sister and

[2247] Transcript of 22 October 2004, TF1-078, pp. 81-84; Transcript of 21 January 2005, TF1-071, pp. 57-73; Transcript of 17 May 2007, Issa Sesay, p. 12; Transcript of 12 November 2007, DIS-281, p. 24.
[2248] Transcript of 21 January 2005, TF1-071, pp. 54-57.
[2249] Transcript of 27 January 2005, TF1-015, p. 149; Transcript of 28 January 2005, TF1-015, pp. 2-5.
[2250] Transcript of 21 January 2005, TF1-015, pp. 8-9.

did not see her again until after disarmament.[2252]

1179. While TF1-015, an abducted civilian, was in Wendedu camp,[2253] he heard women in the camp screaming at night "[l]eave me, leave me, leave me alone. You did not bring me for this. I'm not your wife."[2254] He spoke to some women who said that they were forced to have sex with the rebels at night.[2255] The Commanders claimed that captured women were their wives, stating that "there is no wedlock from the family. Just because of gun, you've taken her to be your wife, using her as your wife."[2256]

5.1.5. Sawao: Rapes, Beatings and Amputations

1180. Some weeks after the Intervention in February 1998, TF1-195 was captured in the bush between Kainako and Gandorhun by two rebels - one of whom was wearing a soldier's uniform and armed with a gun, while the other was dressed in civilian clothes and carrying a stick to which a red piece of cloth was attached.[2257] The rebel with the gun pointed it at TF1-195 and said "You, come out here." He ordered her to undress, and she stripped to her underwear. The rebel with the gun ordered her to remove her underwear and to lie down and she did so.[2258]

1181. The rebel with the gun lowered his trousers and told TF1-195 to open her legs so he could have sex with her. While the rebel was having sex with her, another man arrived, also with a stick. The two men watched the rebel have sex with TF1-195.[2259] They then took turns having sex with the witness, while the rebel with the gun remained standing over her. After each man had finished, the rebel with the gun ordered TF1-195 to follow them into the hills, until they reached a large group of captured civilians comprising men, women and children. There were rebels with the civilians, but the civilians outnumbered them.[2260]

1182. The rebels ordered the civilians to carry loads on their head to Sawao.[2261] When the

[2251] Transcript of 22 July 2004, TF1-217, pp. 11-13, 39.
[2252] Transcript of 22 July 2004, TF1-217, pp. 11-13, 39.
[2253] Transcript of 27 January 2005, TF1-015, p. 149; Transcript of 28 January 2005, TF1-015, pp. 2-5.
[2254] Transcript of 28 January 2005, TF1-015, pp. 6, 8.
[2255] Transcript of 28 January 2005, TF1-015, pp. 8-10.
[2256] Transcript of 28 January 2005, TF1-015, p. 9.
[2257] Transcript of 1 February 2005, TF1-195, pp. 10-11.
[2258] Transcript of 1 February 2005, TF1-195, pp. 10, 12.
[2259] Transcript of 1 February 2005, TF1-195, p. 13.
[2260] Transcript of 1 February 2005, TF1-195, pp. 14-15.
[2261] Transcript of 1 February 2005, TF1-195, pp. 14-18.

captured civilians were presented to rebel leader Lieutenant T upon their arrival in Sawao, Lieutenant T became furious and berated the rebels, stating "I have told you that you should not bring civilians before me. My instructions are if you capture them, kill them and leave them there".[2262] Lieutenant T informed the rebels that ECOMOG forces had captured Kailahun and Kono. He then declared "This is the time we are going to show them we own this country."[2263] He ordered the rebels to "Do away with these ones".[2264]

1183. Subsequent to this order from Lieutenant T, the rebels asked a civilian where the Kamajors were. The civilian responded that she knew nothing about Kamajors. This angered the rebels, who said "Oh, so you are getting interested in the Kamajors more than us and you are Kabbah's people. This is the time we are going to deal with you people to prove to you that we own this land now."[2265]

1184. The rebels beat the civilians with sticks and gun butts, wounding one of the women on the head. They then instructed a small boy to bring a cutlass and cut off the right hand of each of the five men. The small boy did so, and the rebels ordered the women to clap and to laugh. One of the men whose hand was severed was the brother of TF1-195.[2266] The rebels then stretched TF1-195's hand to amputate it, but one of them intervened and stopped it. However, her right arm was severed by the same small boy.[2267]

1185. The rebels divided the female civilians into two groups. The youngest girls, believed to be virgins, were in one group and TF1-195 and five older women were in the second group. The young girls were taken away in one direction, whilst the witness's group was subsequently taken towards Benguema Fiama by a group of rebels armed with guns and sticks. The women were told to undress and lie down. TF1-195 was raped by two different rebels and the second rebel inserted a stick into her vagina. [2268] The witness did not consent to these acts, and since

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[2262] Transcript of 1 February 2005, TF1-195, pp. 19-20.
[2263] Transcript of 1 February 2005, TF1-195, p. 20.
[2264] Transcript of 1 February 2005, TF1-195, p. 20.
[2265] Transcript of 1 February 2005, TF1-195, p. 21.
[2266] Transcript of 1 February 2005, TF1-195, pp. 22-24.
[2267] Transcript of 1 February 2005, TF1-195, p. 24.
[2268] Transcript of 1 February 2005, TF1-195, pp. 24-27. The habit of so-called "virgination" was common, as reported by HRW: "The rebel forces subjected women and girls of all ages, ethnic groups, and socio economic classes to individual and gang rape. Although the rebel forces raped indiscriminately irrespective of age, the rebels favoured girls and young women whom they believed to be virgins." Exhibit 146, HRW Report on Sexual Violence, p. 28. *See also* Transcript of 13 July 2004, TF1-196, p. 26; Transcript of 2 March 2006, TF1-213, pp. 11-

this maltreatment has experienced physical pain for five years.[2269]

5.1.6. Yardu: Killings and Amputation

1186. TF1-197 was captured in April 1998 with six other civilians and taken to a rebel base in Yardu. After arriving at the base, the six civilians were killed and TF1-197 was the sole survivor.[2270]

1187. The rebels amputated TF1-197's arm with a cutlass.[2271] They told him to go to President Kabbah, because Kabbah had extra hands and could fix his amputation. The rebels gave him a letter to give to Kabbah.[2272]

5.1.7. Killings at PC Ground

1188. TF1-263 was captured by three rebels in a village near Koidu some time in April or May 1998.[2273] The rebels told him that the name of their "boss man" was Wallace. The rebels took TF1-263 to a camp with other civilians at Kissi Town.[2274]

1189. On one occasion, less than a month after TF1-263 was captured, he was forced to accompany Wallace and his rebels from Kissi Town to PC Ground to collect rice. While approaching PC Ground, TF1-263's group encountered a rebel at a junction holding a pistol. There were five people with him, who were tied up and dressed only in underwear. TF1-263's group continued towards PC Ground and shortly thereafter, TF1-263 heard multiple gunshots from the direction of the junction. When TF1-263's group passed the junction on the return to Kissi Town, he saw five corpses lying by the side of the road. He recognised them as the people that had been with the rebel.[2275]

12; Transcript of 17 March 2006, TF1-031, p. 89, who used the words: "My daughter, 10 years old, she was deflowered."

[2269] Transcript of 1 February 2005, TF1-195, pp. 24-26.

[2270] Transcript of 22 October 2004, TF1-197, pp. 7-9.

[2271] Transcript of 22 October 2004, TF1-197, pp. 9-14.

[2272] Transcript of 22 October 2004, TF1-197, pp. 15-16.

[2273] TF1-263 testified that at the time these events occurred "the mangoes had ripened": Transcript of 6 April 2005, TF1-263, p. 7. TF1-304 testified that the mango season in Kono District is in April and May: Transcript 13 January 2005, TF1-304, p. 50. The Chamber is thus satisfied that the events described by TF1-263 fall within the Indictment period for Counts 3 to 5 in Kono District.

[2274] Transcript of 6 April 2005, TF1-263, pp. 7-11, 14-15.

[2275] Transcript of 6 April 2005, TF1-263, pp. 19-22; Transcript of 8 April 2005, TF1-263 pp. 11-16.

5.1.8. Kayima: Carving 'AFRC/RUF' on civilians

1190. After the Intervention, TF1-074 and his younger brother were captured and taken to Kayima by RUF and AFRC rebels. At Kayima, they were taken to a group of 16 other captured civilians. The rebels, led by one Bangalie, ordered the civilians to take off their clothes and one of them brought a surgical blade. The rebels carved RUF and/or AFRC on the bodies of all the captured civilians. [2276]

5.1.9. Penduma: Rapes, Killings and Amputations

1191. In April 1998 a large number of rebels wearing jeans and military fatigues and led by Staff Alhaji surrounded Penduma. TF1-217, who was present, knew Staff Alhaji personally from their childhood in Koidu. He also knew many of the other rebels, including Junior from Tombodu, who was not an SLA soldier but a 'vigilante'; Tamba Joe, who was an AFRC fighter; and Lieutenant Jalloh.[2277]

1192. Rebels shot at civilians who tried to escape Penduma. TF1-217 and his family were captured, along with many other civilians. The leader of the group separated the civilians into three groups. The first group comprised children, pregnant women and nursing mothers, while the remaining women made up the second group. The men formed a third group and were ordered into three separate lines. [2278]

1193. Staff Alhaji sat on a tree stump and signalled to each of his men to select a woman. The men came forward and took women. Some women were taken inside houses and some men raped their selected woman outside in view of the civilians.[2279] TF1-217's wife was raped by eight fighters, including Junior and Tamba Joe:

> Some of them, they bow her down, some of them laid her down and take the feet up. This is how they raped my wife.[2280]

1194. Men holding guns ordered him to watch and to count the men raping his wife. His

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[2276] Transcript of 12 July 2004, TF1-074, pp. 7-8, 13. *See also* Confidential Exhibit 2, which contains a photograph of the witness that shows the markings.
[2277] Transcript of 22 July 2004, TF1-217, pp. 20, 28, 30-31, 35, 39. The witness did not know Lieutenant's Jalloh's affiliation.
[2278] Transcript of 22 July 2004, TF1-217, pp. 16-17.
[2279] Transcript of 22 July 2004, TF1-217, p. 17.
[2280] Transcript of 22 July 2004, TF1-217, p. 19.

children, sitting in the other group, were also watching.[2281] As the men raped his wife, they told TF1-217:

> They only told me that I don't know how to do it, they knew how to do it, they were laughing, they shouted. [2282]

1195. After raping his wife, Tamba Joe stabbed and killed her. Other women were also killed after being raped. TF1-217 saw the corpses of about six women, including the one of his wife.[2283]

1196. Staff Alhaji ordered his men to tie up the men in the first line, comprising about 14 to 15 people, and lock them in a house. TF1-217 heard shouting and firing from the house, and the house was then set ablaze.[2284] Staff Alhaji then ordered a boy to empty a bag, which was full of knives. His men took the knives and moved the second line, of more than eight men, behind the Penduma Primary School. TF1-217 later passed behind the school and observed that the men had been stabbed:

> Some were beheaded [...] I saw them. Some were just fighting to die; some had died already.[2285]

1197. The rebels then turned to the third line, in which TF1-217 remained with seven other men. The rebels amputated the hands of the first two men in the line, arriving next at TF1-217. Staff Alhaji ordered them to tie him up and tie his feet to a tree. Staff Alhaji said "I'm coming to amputate both feet of yours [...] You will never play football here any more."[2286]

1198. TF1-217 pleaded but to no avail, until Staff Alhaji saw the witness's Seiko-Five wristwatch. He ordered his boys to untie the witness and he cut off the watch, cutting TF1-217's wrist in the process and leaving a permanent scar.[2287] He then ordered TF1-217 to put his hand on the floor. Staff Alhaji said "until the end of the world [...] you'll never put a wrist

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[2281] Transcript of 22 July 2004, TF1-217, pp. 17-20, 23. HRW has written in its 1998 report, that "[t]he crimes of sexual violence committed by the AFRC/RUF against women and girls are often accompanied by other forms of violence." And "Often, the rapes occur in front of family members and others, and in some cases relatives are forced to rape their sisters, mothers or daughters." Exhibit 175, HRW Report July 1998, p. 19450.
[2282] TF1-217, Transcript 22 July 2004, p. 18.
[2283] Transcript of 22 July 2004, TF1-217, pp. 23-24.
[2284] Transcript of 22 July 2004, TF1-217, pp. 20, 23.
[2285] Transcript of 22 July 2004, TF1-217, pp. 21, 25.
[2286] Transcript of 22 July 2004, TF1-217, pp. 21, 23.
[2287] Transcript of 22 July 2004, TF1-217, pp. 22, 27.

watch on this particular hand."[2288] As Staff Alhaji raised the cutlass, TF1-217 withdrew his right hand from the ground. Staff Alhaji hit him with the cutlass on his head, so that it started bleeding. TF1-217 then put his left hand on the ground and Staff Alhaji amputated it. TF1-217 was amputated in the presence of his children:

> My children were sitting in front of me. Where they were put, they were sitting and they were looking – seeing me, because they didn't hide them. They were in the open and they were seeing what was happening [...][2289]

1199. When TF1-217 attempted to retrieve his amputated hand, Staff Alhafi stabbed him in the back and said:

> It is this hand that we want [...] go to Tejan Kabbah for him to give you a hand because he has brought ten containers load [sic] of arms. Now that you say you don't want our military rule, then go to your civilian rule."[2290]

1200. After the amputation, he was permitted to leave with his children. After a short distance, he fell several times due to weakness from the great loss of blood, and the bones in his arm being exposed. However, his children continuously urged him to get up as the rebels were still behind them. They walked until they approached Kwakuma and encountered ECOMOG soldiers, who took him to a hospital.[2291]

1201. As we conclude below in the Freetown and Western Area Legal Findings,[2292] the available documentary evidence establishes that the enormity and scale of violence leaves the Chamber in no doubt that the infliction of injury and violence on civilians was a primary objective of the attacking forces.

1202. These forces, in perpetrating those horrendous acts, did so in a bid to disempower President Kabbah and to 'topple' his 'selfish and corrupt' regime by killing or maiming his supporters and further, to terrorise the civilian population that was supportive of him. In addition, they were in effect, sending a message to the entire Sierra Leonean population that the same fate awaits whoever does not back the AFRC/RUF Junta alliance.

[2288] Transcript of 22 July 2004, TF1-217, p. 22.
[2289] Transcript of 22 July 2004, TF1-217, pp. 15-16, 22.
[2290] Transcript of 22 July 2004, TF1-217, p. 22. The witness displayed a scar on the left hand side of his back for the Court: Transcript of 22 July 2004, TF1-217, p. 27.
[2291] Transcript of 22 July 2004, TF1-217, pp. 24-25.
[2292] *Infra* paras 1521-1522.

1203. This conclusion is amply supported and buttressed by the evidence of Prosecution's witness TF1-217.

5.1.10. Koidu Buma: Killing of 15 civilians

1204. In May 1998, while at Koidu Buma and on the way to Koidu Geya, Operation Commander RUF Rambo and a group of rebels crossed paths with 15 civilians. Rambo proceeded to 'brutally' kill all 15 civilians, felling them with a cutlass.[2293]

5.1.11. Bumpeh: Rapes and Sexual Violence

1205. In March 1998, rebels captured a group of civilians in Bumpeh, stripped them naked and forced them into a line. The rebels commanded them to laugh and told them that their lives had ended. A rebel ordered a couple to have sexual intercourse in front of the other captured civilians, stating that he would kill them if they did not comply.[2294] The rebels then forced the man's daughter to wash her father's penis.

1206. They rebels questioned TF1-218 about the whereabouts of her husband. When TF1-218 answered that he had been killed, the rebel responded that "since your husband is not here, I am going to have sexual intercourse with you."[2295] He pushed her to the ground, putting his gun on one side and his knife on the other, lifted her feet, opened her legs and started forcing her to have sex with him under threat of death. TF1-218 was then raped by another rebel.[2296] She described her condition after the two rapes: "I was trembling, so I got up. I stood there for some time trembling." [2297] TF1-218 managed to escape but not before the rebels had shot her hand. She said "I was naked. Everywhere blood was oozing out of me [...] from my vagina, and also from my hand."[2298]

5.1.12. Bomboafuidu: Rape and Sexual Violence

1207. TF1-192 and 20 other civilians were captured in Bomboafuidu at the beginning of the

[2293] Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 22-23.
[2294] Transcript of 1 February 2005, TF1-218, pp. 79-84, 91-92.
[2295] Transcript of 1 February 2005, TF1-218, p. 86.
[2296] Transcript of 1 February 2005, TF1-218, pp. 85-86.
[2297] Transcript of 1 February 2005, TF1-218, p. 86.
[2298] Transcript of 1 February 2005, TF1-218, p. 89.

1998 rainy season, by about 50 armed men mostly in combat uniform. [2299] The civilians were ordered to undress. Male and female captives were paired up and ordered to have sex with each other.[2300]

1208. The sexual violence was combined with sexual mutilations, with the rebels slitting the private parts of several male and female civilians with a knife.[2301] The men also inserted a pistol into the vagina of one of the female captives where it remained overnight.[2302]

5.1.13. Tomandu: Carving 'RUF' on civilian men

1209. TF1-016 fled from Koidu to Guinea at the time of the Intervention in February 1998. Upon her return to Sierra Leone approximately three months later, rebels captured her and twelve other civilians, including her 11-year old daughter, in Tomandu, Kono District. The rebels, some of whom were armed with guns, identified themselves as members of the RUF. [2303]

1210. The RUF divided the civilians into groups of men and women. The men were told to remove their shirts and a rebel named Soh used a razor blade to carve 'RUF' into their backs and arms. The rebel told the civilians that he was marking them so that if any of them went to Guinea, they would be killed. The men were not given any medical treatment after being carved but were released.[2304]

5.1.14. Kissi Town: 'Forced Marriages' of TF1-016 and her daughter

1211. Following the carving incident described in the previous paragraph, TF1-016, her daughter and the other civilian women were forced to accompany the RUF on foot to Kissi Town, carrying rice on their heads. When they arrived, the rebels gave the rice to their leader, Alpha.[2305] The RUF then distributed the female captives among themselves, with each rebel saying "this is my own wife". Both TF1-016 and her daughter were given to rebels as wives in this fashion. TF1-016 was given to Kotor, a member of the RUF.[2306] TF1-016 explained that she

[2299] Transcript of 1 February 2005, TF1-192, pp. 57-61.
[2300] Transcript of 1 February 2005, TF1-192, pp. 62-64.
[2301] Transcript of 1 February 2005, TF1-192, p. 65.
[2302] Transcript of 1 February 2005, TF1-192, p. 68.
[2303] Transcript of 21 October 2004, TF1-016, pp. 5-8, 33.
[2304] Transcript of 21 October 2004, TF1-016, pp. 9-11.
[2305] Transcript of 21 October 2004, TF1-016, pp. 12-14.
[2306] Transcript of 21 October 2004, TF1-016, p. 14.

did not consent to this arrangement:

> [It was] not my wish, because somebody is not your husband and you are just taken and given to the person. I was not really happy about it.[2307]

1212. TF1-016 was required to live with Kotor in his house. Alpha also lived in the house and was always armed with a gun.[2308] Kotor was a palm tree tapper and made palm wine for the RUF and he did not carry a gun. In cross-examination, TF1-016 agreed with the proposition that this made him a civilian, but she clearly emphasised that Kotor worked for the RUF.[2309] TF1-016 performed domestic chores for Kotor: she cooked for him, washed his clothes, cleaned his house and pounded rice for him: "I did everything... I used to do all this work up to an extent all my hands were all blistered."[2310] Kotor also made TF1-016 have sex with him on a daily basis, whenever he wished, despite her attempts to tell him that she did not consent. She also made it clear that she complained about it. TF1-016 explained that she was too afraid to attempt an escape, because armed rebels were throughout Kissi Town and "if we attempt to go somewhere, they will do something bad with us."[2311] There were many other captured civilians, men and women, in Kissi Town.[2312] On three occasions while TF1-016 was in Kissi Town, the RUF went out and returned with large numbers of captured civilians.[2313]

1213. After spending a month in Kissi Town, her "husband" Kotor took TF1-016 to Njagbema, where she continued working for him and he continued to force her to have intercourse with him.[2314] TF1-016's daughter was also brought to Njagbema with her rebel "husband". Her daughter told her that on one occasion, Alpha forced her to have sex with him, even though she was crying and other men had to hold her down. TF1-016 told her daughter to be patient because "this is the war" and there was nothing that the women could do about it.[2315] TF1-016 was held captive with Kotor for a period of one year and three months. She did not make any attempt to talk to other civilians outside of her house, because it was not

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[2307] Transcript of 21 October 2004, TF1-016, p. 15.
[2308] Transcript of 21 October 2004, TF1-016, pp. 15-16.
[2309] Transcript of 21 October 2004, TF1-016, pp. 23-24, 29.
[2310] Transcript of 21 October 2004, TF1-016, p. 16.
[2311] Transcript of 21 October 2004, TF1-016, pp. 16-17.
[2312] Transcript of 21 October 2004, TF1-016, pp. 17-18.
[2313] Transcript of 21 October 2004, TF1-016, p. 32.
[2314] Transcript of 21 October 2004, TF1-016, p. 18.
[2315] Transcript of 21 October 2004, TF1-016, p. 19.

permitted and the rebels punished such behaviour by death.[2316] On one occasion, a number of captives attempted to escape from Kissi Town and TF1-016 was summoned and accused of inciting them to do so. The rebels threatened to kill her for this. [2317]

1214. Eventually, TF1-016, her daughter and her other children were released in Kono when the head of the rebels announced that a ceasefire had been concluded and all civilians were be permitted to leave.[2318]

5.1.15. Forced Labour of civilians (February to April 1998)

1215. After the Intervention, Junta forces captured and abducted civilians while in Kono. Men were forced to carry heavy loads.[2319] After Johnny Paul Koroma declared Kono a "no go area" for civilians, Papa Hassan Bangura, other fighters and the RUF abducted civilians from Tombodu, Yomadu and other villages surrounding Koidu. Children aged eight, ten and 12 were also captured. Strong men were used to carry the food for the troops.[2320]

1216. During March 1998 at Guinea Highway in Koidu, AFRC/RUF fighters attended a muster parade every morning at which Kallon would give instructions and assign tasks for food-finding missions, appointing a Commander for each mission. During these missions, civilians were captured and used to carry the food that was found, and some of the fighters used to rape women. Civilians carrying food were sometimes executed rather then released if they could not manage their loads. This was also done in order to prevent them from reporting the abductions and location of the rebels.[2321] TF1-263 was abducted in a village near Koidu during the mango season of 1998 and forced to carry looted property, including rice, clothes and zinc to Kissi Town.[2322]

1217. Between February and March 1998, the rebels captured civilians in the area surrounding Tombodu and forced them to carry loads. While at Tombodu, rebels ordered civilians to search for food and to carry loads, such as batteries for radios, to Kailahun

[2316] Transcript of 21 October 2004, TF1-016, p. 32.
[2317] Transcript of 21 October 2004, TF1-016, p. 20.
[2318] Transcript of 21 October 2004, TF1-016, pp 20-21.
[2319] Transcript of 28 April 2005, Denis Koker, pp. 46-47.
[2320] Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 4-5.
[2321] Transcript of 11 April 2005, TF1-141, pp. 89-95.

District.[2323]

5.1.16. Treatment of Civilians in RUF Camps

5.1.16.1. Background

1218. Civilian camps were established in Kono District by the RUF after the Intervention in 1998. Civilians were rounded up and forced to reside in camps. These civilians were used for forced labour, such as food-finding missions and farming; to transport goods such as food, arms, ammunition and medicines for the rebels, including to and from Kailahun District and at the request of the RUF Headquarters. They were not free to move alone outside the camps, and civilians caught attempting to escape would be punished with beatings or given extra work. The civilians were not paid but they received food for their work.[2324] In addition to the specific camps in respect of which findings are made below, civilian camps existed at locations including PC Ground and Banya Ground near Kissi Town.[2325]

1219. The RUF shifted camps from location to location as the front lines changed, in order to remain sufficiently removed from areas of combat operations.[2326] The Chamber notes that witnesses who worked in positions of responsibility in the camps testified that civilians were detained in camps for their own protection from Kamajors and ECOMOG forces.[2327] However, when asked to clarify what was meant by protection, one witness stated:

> I mean, we used to keep these civilians so they cannot go and contact to enemies, so that they cannot reveal our secret or information. Then the other one is in their own interests, when they have been captured by enemies likely they may be executed by enemies.[2328]

1220. Between April 1998 and December 1998, while the RUF was fighting ECOMOG for control of Koidu, the use of civilians for forced labour was frequent, particularly along the RUF supply route between Kono and Kailahun, and there was no freedom of movement

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[2322] Transcript of 6 April 2005, TF1-263, pp. 5-9. TF1-304 testified that the mango season in Kono District is in April and May: Transcript 13 January 2005, TF1-304, p. 50.
[2323] Transcript of 2 February 2005, TF1-012, pp. 12-16, 22-24. *See also* Transcript of 20 April 2005, TF1-362, p. 40.
[2324] Transcript of 21 January 2005, TF1-071 pp. 39-47.
[2325] Transcript of 6 April 2005, TF1-263, pp. 10-12, 16.
[2326] *See* Transcript of 25 October 2004, TF1-078, pp. 27-32.
[2327] Transcript of 21 January 2005, TF1-071 p. 41.
[2328] Transcript of 21 January 2005, TF1-071, p. 41. *See also* Transcript of 25 October 2004, TF1-078, p. 66.

outside of the camps. Food and medicine shortages were common.[2329] TF1-078 explained that in the camps, civilians were 'used at random by any armed man' for any type of work the rebel wished.[2330]

1221. Between February 1998 and December 1998, the bush paths between Kono and Kailahun were the main supply route for the RUF and all essential military and humanitarian materials were transported to Kono District from RUF Headquarters in Buedu.[2331] Captured civilians in Kono District were frequently used to transport food, medicines and ammunition from Koidu and other parts of Kono District to Kailahun Town.[2332] The RUF in Kailahun received goods including arms and ammunition from Liberia and forced civilians to carry it to Kono.[2333] On occasion, civilians who got tired and could not carry loads were executed.[2334]

1222. The G5s and their assistants acted as "social welfare officers" who liaised with the civilians in the camps and recorded and reported their concerns.[2335] The G5 officers assembled the civilians on a daily basis and addressed them. The civilians were informed of the rules of the camp, the first of which was that escape was prohibited. Other rules including prohibitions on rape and theft.[2336]

1223. Civilian camps remained in existence until disarmament in 2001, although conditions improved following the recapture of Koidu Town by the RUF in 1998 and the signing of the Lomé Peace Accord in July 1999.[2337] Nonetheless, civilian movement remained restricted and civilians were still forced to conduct food-finding missions and perform other types of forced labour.[2338]

[2329] Transcript of 21 January 2005, TF1-071, pp. 46-47.
[2330] Transcript of 25 October 2004, TF1-078, p. 52.
[2331] Transcript of 25 October 2004, TF1-078, pp. 43-44, 52.
[2332] Transcript of 20 July 2005, TF1-360, p. 54 (CS).
[2333] Transcript of 20 July 2005, TF1-360, p. 54; Transcript of 8 November 2005, TF1-366, p. 66. TF1-366 testified that this occurred in the period leading up to the death of Sani Abacha. Abacha died on 8 June 1998: Exhibit 54, New York Times Obituary of former Nigerian President Sani Abacha, 9 June 1998, pp. 16867-16869.
[2334] Transcript of 21 January 2005, TF1-071 pp. 47-48; Transcript of 11 April 2005, TF1-141, pp. 103-108; Transcript of 10 July 2006, TF1-041, pp. 54-55.
[2335] Transcript of 25 October 2004, TF1-078, pp. 62-63.
[2336] Transcript of 25 October 2004, TF1-078, pp. 62-65.
[2337] TF1-078 describes the change in conditions as being 'from worse to bad': Transcript of 25 October 2004, TF1-078, pp. 51-54.
[2338] Transcript of 13 January 2005, TF1-304, pp. 2-17; Transcript of 21 January 2005, TF1-071 pp. 39-47. TF1-078 describes the change in conditions as being 'from worse to bad': Transcript of 25 October 2004, TF1-078, pp. 51-54.

5.1.16.2. Superman Ground

1224. After the AFRC/RUF forces had been pushed out of Koidu by ECOMOG forces, about 700 to 800 rebels, SLAs, women and captured civilians were living at Superman Ground. The civilians were mainly those captured during the retreat of the AFRC/RUF forces. They were used to help the Commanders and the fighters in cooking.[2339]

5.1.16.3. Kaidu

1225. Following the AFRC/RUF attack in February/March 1998, TF1-078 fled Koidu Town with his wife and children. Approximately three weeks later, while he was living in the bush with his family, they encountered three armed rebels. The rebels told the civilians to produce all their belongings or they would be executed. The civilians surrendered everything in their possession, including clothes, radios, watches and all of their food.[2340]

1226. The rebels asked TF1-078 to hand over his money and diamonds. When TF1-078 informed them that he had none, the rebels ordered TF1-078 and the other four adults to lie on their stomachs. The rebels then beat the civilians with the back of a cutlass for about half an hour, leaving them in serious pain. Before leaving, the rebels told the civilians to flee to Guinea because they had orders to execute civilians in the area.[2341]

1227. That night, two other groups of armed rebels arrived and stated that no civilian was permitted to remain in the bush due to the risk of being killed by Kamajors. The rebels told the civilians to report to Rocky in the nearby town of Kaidu, and that any civilian who remained in the bush would be deemed an "enemy."[2342]

1228. TF1-078 and those of his family who were not seriously injured from the beating reported to Kaidu, where he found many other civilians. The G5 officer wrote down their names. TF1-078 then requested a travel pass to return to the bush to accompany the injured members of his family to the camp. He was told that Kallon was the only person with the

[2339] Transcript of 12 July 2005, TF1-361, pp. 18-20. *See also* Transcript of 21 January 2005, TF1-071 pp. 39-47.
[2340] Transcript of 22 October 2004, TF1-078, pp. 47-56.
[2341] Transcript of 22 October 2004, TF1-078, pp. 57-59.
[2342] Transcript of 22 October 2004, TF1-078, pp. 60-65. Although the witness referred to Rocky as both Colonel and Captain Rocky, the Chamber is satisfied from the evidence of other witnesses pertaining to Kono District that the RUF Commander in charge of the civilians at Kaidu was in fact Colonel Rocky: *see* Transcript of 21 January

authority to issue a pass. Rocky's security guards took TF1-078 to Kallon on Guinea Highway where Kallon ordered his secretary to write the pass. TF1-078 then brought the rest of his family to Kaidu.[2343]

1229. TF1-078 estimated that there were 200 to 300 civilians in Kaidu who had been evacuated from the surrounding jungles where they had been hiding.[2344] The civilians were kept in Kaidu so that they would not be mistaken for Kamajors in the bush and executed. There were over 100 armed guards who prevented civilians from leaving Kaidu. The town was surrounded in all directions by checkpoints manned by armed rebels. The RUF usually refused to grant movement passes on account of the war.[2345]

1230. The civilians in Kaidu were forced to harvest palm fruits and process palm oil for AFRC/RUF fighters. They were also forced to catch fish under armed escort. TF1-078 testified that whenever the rebels required work done, they instructed the G5 to arrange for civilians to do it.[2346]

1231. On one occasion Kallon visited Kaidu and advised Captain Rocky that the rebels should not be "hostile" with the civilians. The day after he left, Captain Rocky assembled the civilians and explained to them the rules and regulations of the camp. These rules included that civilians were not permitted to escape or communicate with the enemies; that they should obey orders issued by the fighters; and that there should be no raping or stealing. The punishment for breaking the rules was execution.[2347]

5.1.16.4. Wendedu

1232. After approximately one month at Kaidu, Rocky told the civilians that he had received an order from Kallon at headquarters in Koidu Town to move the camp to Wendedu,

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2005, TF1-071, pp. 57-73; Transcript of 17 May 2007, Issa Sesay, p. 12; Transcript of 12 November 2007, DIS-281, p. 24.

[2343] Transcript of 22 October 2004, TF1-078, pp. 66-72. The Chamber has used the term 'camp' throughout to describe the locations at which civilians were held, however we note that TF1-078 explained that Kaidu was actually a township which was under RUF control: Transcript of 25 October 2004, TF1-078, p. 62. The Chamber notes that it would appear that many of these 'camps' (including, for instance, Koidu and Wendedu) were in fact captured towns sealed off by RUF checkpoints.

[2344] Transcript of 22 October 2004, TF1-078, pp. 66-72.

[2345] Transcript of 22 October 2004, TF1-078, p. 73.

[2346] Transcript of 22 October 2004, TF1-078, pp. 73-76.

[2347] Transcript of 22 October 2004, TF1-078, pp. 73-76.

approximately one mile from Kaidu. Rocky stated that the move was for the protection of the civilians as Kaidu was too close to the front line. He was also worried that civilians may escape to the enemy. [2348]

1233. The conditions at Wendedu were the same as at Kaidu: civilians were not permitted freedom of movement, the camp was surrounded by checkpoints and they were required to forage for food for the rebels. TF1-078 stated that the civilians, of whom there were 300 to 400, lived amicably with the rebels.[2349] However, one day Rocky ordered the execution of a female Nigerian civilian for no apparent reason, which surprised and terrified the civilians. Although the woman had lived in Kono District for 20 years, Rocky told the civilians that if she escaped she would disclose their position to ECOMOG and the camp would be bombarded by ECOMOG jets.[2350]

1234. TF1-015 testified that in 1998 he was captured by rebels commanded by Rocky who took him to a camp at Wendedu, where he was kept in captivity with other civilians and guarded by armed fighters. TF1-015 could not urinate without being escorted. [2351] There were about 500 rebels at Wendedu, including Rocky, CO Pepe, Rebel Father, Captain KS Banya, and around 150 civilians, including women and children.

1235. The civilians at Wendedu were forced to loot food for the rebels.[2352] Civilians could not leave as the roads were guarded by armed men day and night, and they could not refuse to go on food-finding missions as they risked being killed by rebels.[2353] The food civilians found was called "government property" and was given to the rebels.[2354] On one such occasion, the civilians returned to Wendedu after being for one week on a food-finding mission with sore and blistered feet from the long walk.[2355]

5.1.16.5. Kunduma

1236. From Wendedu, the civilians were moved to Mogbedu, Masundu and then Madina,

[2348] Transcript of 22 October 2004, TF1-078, pp. 77-79.
[2349] Transcript of 22 October 2004, TF1-078, pp. 80-81.
[2350] Transcript of 22 October 2004, TF1-078, pp. 81-84.
[2351] Transcript of 27 January 2005, TF1-015, pp. 104- 113.
[2352] Transcript of 28 January 2005, TF1-015, pp. 9-11 TF1-015; Transcript 31 January 2005, TF1-015, p. 64.
[2353] Transcript of 31 January 2005, TF1-015, pp. 64-65.
[2354] Transcript of 28 January 2005, TF1-015, pp. 17-19.

remaining a short time in each location before moving to Kunduma. Approximately 1000 civilians resided in Kunduma camp between October 1998 and December 1998, with civilians brought there daily by the fighters. Kunduma was a labour camp which the rebels codenamed "Target Q".[2356]

1237. Conditions were the same as in other camps: civilians were guarded by armed rebels and sent on food-finding missions with fighters. Whenever the 2nd Battalion Headquarters in Meiyor (Superman Ground) needed labour, the G5 at the camp would collect civilians and escort them there for work. Civilians were often required to convey produce such as coffee and cocoa to RUF Headquarters in Buedu, Kailahun District.[2357] The civilians returned carrying salt, Maggi and cigarettes for the 2nd Battalion Headquarters.[2358]

1238. In December 1998, up to 150 civilians were forced to travel from Kono to Kailahun to carry ammunition back to Superman Ground to be used by the RUF in the ensuing attack on Koidu Town commanded by Sesay.[2359] When Sesay arrived in Kono in December 1998, he was introduced to those responsible for the labour camp at Kunduma. Sesay had arranged the transportation of items for the civilians at Kunduma from Kailahun.[2360]

1239. Following the recapture of Koidu Town in December 1998, the RUF advised all civilians to return to Koidu "for protection."[2361] Checkpoints were established around the town and civilians were not permitted to leave without permission from the G5. Civilians were forced to work for the RUF on demand.[2362]

5.1.17. Forced mining in Kono (December 1998 to January 2000)

5.1.17.1. Overview of the mining process

1240. The Chamber heard a substantial amount of evidence relating to diamond mining in Kono District and throughout Sierra Leone. As early as August 1997, the AFRC/RUF Junta

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[2355] Transcript 28 January 2005, TF1-015, pp. 16-18.
[2356] Transcript of 25 October 2004, TF1-078, pp. 31-32, 39.
[2357] Transcript of 25 October 2004, TF1-078, pp. 32-33.
[2358] Transcript of 25 October 2004, TF1-078, pp. 34-35. Maggi is a commonly used condiment: Transcript of 25 October 2004, TF1-078, pp. 41-42
[2359] Transcript of 21 January 2005, TF1-071, pp. 85-87.
[2360] Transcript of 25 October 2004, TF1-078, pp. 40-42.
[2361] Transcript of 25 October 2004, TF1-078, pp. 44, 77-78.
[2362] Transcript of 25 October 2004, TF1-078, pp. 44, 46.

forced civilians to conduct alluvial diamond mining throughout Kono District. Later, the AFRC/RUF Junta also relied on Kono diamonds to finance their administration and war efforts.[2363] Throughout the armed conflict, the RUF also used diamonds to buy ammunition, arms, medicine and food.[2364]

1241. Superman gave a written order to Commanders on 30 March 1998 to hand over all civilians for mining.[2365] After ECOMOG forces had pushed the AFRC/RUF out of Koidu in April 1998 and the AFRC departed Kono District, the RUF conducted mining operations in parts of Kono District including Papany Ground[2366] and Superman Ground, where a mining "zoo bush" or "zo bush" was established.[2367]

1242. The practice continued throughout 1998, but it intensified significantly after the recapture of Kono by the RUF in December 1998.[2368] In December 1998, MS Kennedy was appointed Overall Mining Commander.[2369] MS Kennedy held this position until 2000 when he was replaced by Peleto, who was given the title of Minister for Mines with the rank of Colonel.[2370] Forced mining for the RUF continued until disarmament in 2002.[2371] Peleto retained his responsibilities until that time.[2372] Between December 1998 and 2002, the RUF also had main mining offices in Tongo in Kenema District and in Kamakwie in Bombali

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[2363] *Infra* paras 1240-1258.
[2364] Transcript of 21 January 2005, TF1-071, p. 114.
[2365] Exhibit 341, Copy of a Letter from Col. Dennis Mingo dated 30 March 1998, p. 341; Transcript of 14 April 2008, Morris Kallon, pp. 91-93.
[2366] Exhibit 35, Salute Report from Bockarie of 26 September 1999, p. 2371; Exhibit 277, Situation Report of Blackguard Commander to the Leader, undated, p. 9681; Transcript of 10 November 2005, TF1-366, pp. 13-14 (CS); Transcript 21 January 2005, TF1-071, pp. 116-119 (CS); Transcript of 10 July 2006, TF1-041, p, 52 (CS); Transcript of 24 May 2007, Issa Sesay, p. 28 (CS).
[2367] Transcript of 14 April 2008, Morris Kallon, pp. 91-93. Several witnesses used the word 'zoo bush' or 'zo bush' in their testimony. TF1-361 explained that 'when we talk about zoo bush, it means when you build houses in the bush to prevent yourself [sic] from the enemy locating you': Transcript of 12 July 2005, p. 8. The Chamber accordingly understands the term to mean a semi-permanent community comprising civilians and fighters living in the bush to evade ECOMOG and Kamajor attack.
[2368] Transcript of 21 January 2005, TF1-071, pp. 101-103 (CS); Transcript of 10 November 2005, TF1-366, pp. 2-33; Transcript of 22 June 2006, TF1-367, p. 33 (CS); Transcript of 20 July 2006, TF1-371, pp. 56, 69-72 (CS); Transcript of 10 July 2006, TF1-041, pp. 51-53 (CS); Transcript of 24 May 2007, Issa Sesay, pp. 13-14.
[2369] Transcript of 21 January 2005, TF1-071, pp. 101-103 (CS); Transcript of 10 November 2005, TF1-366, p. 4 (CS); Transcript of 23 June 2006, TF1-367, pp. 49-50; Transcript of 10 July 2006, TF1-041, pp. 51-53 (CS); Transcript of 24 May 2007, Issa Sesay, pp. 18-20; Transcript of 29 February 2008, DIS-089, pp. 55-56; Transcript of 14 April 2008, Morris Kallon, p. 93.
[2370] Transcript of 21 January 2005, TF1-071, pp. 101-102; Transcript of 10 November 2005, TF1-366, p. 15 (CS).
[2371] Transcript of 10 November 2005, TF1-366, pp. 9, 16 (CS).
[2372] Transcript of 10 November 2006, TF1-366, pp. 15-16 (CS).

District.[2373]

1243. Within each RUF mine, there were groups of nine persons called gangs, each with a leader. Every diamond found had to be handed over by the worker to the gang leader who then gave it to the Operation Commander.[2374] Each mining site had an Operation Commander and a Deputy Commander, who provided security to the mines, collected and weighed diamonds before reporting and passing them to the Overall Mining Commander and his team of diamond evaluators and clerks.[2375]

1244. The Overall Mining Commander was in charge of deploying civilians to the mining areas and provided all logistics to be used for the mining, including shovels, diggers, boots and petrol.[2376] Civilians who mined without permission from the RUF were arrested by the Overall Mining Commander, who was also in charge of detailed bookkeeping and registering diamonds according to the mining area of providence.[2377] These Diamond Production Records reveal that between 30 October 1998 and 31 July 1999 about 8000 pieces of diamonds were extracted and claimed as RUF property from both Kono District and Tongo Field in Kailahun District; similar records show that 2134 pieces of diamonds were extracted from mines in Kono District between 2 February 1999 and 11 January 2000.[2378]

1245. The Overall Mining Commander, and later the Minister for Mines who inherited all the duties and responsibilities of the former post, collected the diamonds, weighed and packaged them in sealed parcels and delivered them to Sesay, in his capacity as Battlefield Commander, either at his house or at the RUF mining office in Koakoyima, Kono District.[2379] Sesay, in turn, reported to Bockarie, the Chief of Defence Staff, in Buedu, Kailahun

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[2373] Transcript of 10 November 2005, TF1-366, p. 30 (CS).
[2374] Transcript of 22 June 2006, TF1-367, p. 38.
[2375] Transcript of 21 January 2005, TF1-071, pp. 100-101 (CS); Transcript of 10 November 2005, TF1-366, p. 11; Transcript of 21 June 2006, TF1-367, pp. 38-39 (CS).
[2376] Transcript of 10 November 2005, TF1-366, p. 14 (CS).
[2377] Transcript of 10 November 2005, TF1-366, p. 18, 20 (CS); Transcript of 29 February 2008, DIS-089, pp. 56-57.
[2378] Exhibit 41, Diamond Production Records, p. 2394; Exhibit 42, RUF Mining Units Record Book, pp. 2396-2412.
[2379] Transcript of 21 January 2005, TF1-071, pp. 109-112, 114 (CS); Transcript of 10 November 2005, TF1-366, pp. 14-15; Transcript of 22 June 2006, TF1-367, pp. 38-43 (CS); Transcript of 21 July 2006, TF1-371, pp. 69-72 (CS). The Chamber notes that Koakoyima was also spelled Kaoquima and Kwakoyima in the different Transcripts.

District.[2380] The diamonds would be used by the RUF for bartering and buying ammunitions, arms, medicine and food.[2381]

5.1.17.2. "Government" mining sites in Kono District

1246. As previously noted, RUF mining sites were relatively few until Koidu was recaptured by the AFRC/RUF in December 1998. From this point forth, mining operations expanded to numerous areas throughout Kono District. Mining took place at Tombodu, Sukudu and Peyima in Kamara Chiefdom; Number 11, Yaradu Gbense, Boroma-38, Konokortah and Gbukuma in Gbense Chiefdom; Kwakoyima, Sokogbeh, Kongo Creek, Benz Garage area and the Opera Cinema area in Tankoro Chiefdom; Simbakoro, Yengema Guiyor and Bumpe in Nimikoro Chiefdom; Sewafe, Gold Town, Ndorgboi and Sandiya in Nimiyama Chiefdom; and Yomadu, Yorkodu, Baffin River, and Bagbema in Sandor Chiefdom.[2382] Other locations included Mortema, Bandafaye, Gbeko, Gieya, Kaisambo, Kimberlite, 27 and Yellow Mosque.[2383] Approximately 200 civilians worked in each major pit.[2384]

1247. When mining operations recommenced under MS Kennedy in December 1998, he brought 60 or 70 civilians from the bush to wash the gravel that ECOMOG forces had left behind at the Koindu sites.[2385] The RUF then started digging its own pits, using up to 300 civilians at those sites.[2386] Civilians who were not willing volunteers were captured and brought forcefully to mining sites, where they were handed over to Kennedy and forced to work at gunpoint.[2387] TF1-367 testified that "civilians were captured just like you would capture a chicken."[2388] At Kaisambo, for instance, 200 to 300 civilians were captured, forced to work and

[2380] Transcript of 21 January 2005, TF1-071, pp. 101-110 (CS); Transcript of 10 November 2005, TF1-366, pp. 10-11 (CS); Transcript of 23 June 2006, TF1-367, p. 80 (CS).
[2381] Transcript of 20 July 2004, TF1-077, p. 80; Transcript of 21 July 2004, TF1-077, p. 30; Transcript of 20 July 2004, TF1-199, p. 80; Transcript of 21 January 2005, TF1-071, p. 113 (CS); Transcript of 2 February 2005, TF1 012, pp. 30-37.
[2382] Transcript of 21 January 2005, TF1-071, pp. 117-120 (CS); Transcript of 19 February 2007, DIS-307, pp. 77-80.
[2383] Transcript of 10 November 2005, TF1-366, p. 5.
[2384] Transcript of 21 January 2005, TF1-071, p. 120 (CS).
[2385] Transcript of 22 June 2006, TF1-367, pp. 35-38 (CS).
[2386] Transcript of 22 June 2006, TF1-367, pp. 36-37 (CS).
[2387] Transcript of 10 November 2005, TF1-366, pp. 13-14 (CS); Transcript 21 January 2005, TF1-071, pp. 116-119 (CS); Transcript of 22 June 2006, TF1-367, p. 37 (CS). *See also* Transcript of 24 May 2007, Issa Sesay, pp. 27-32.
[2388] Transcript of 22 June 2006, TF1-367, pp. 50-51 (CS).

released at the end of each day.[2389]

1248. Mining operations were conducted from Monday to Thursday.[2390] Civilians would go to the surrounding villages on the weekends to find food and would then return to work. Civilians who refused to mine were beaten or sent to Yengema to undergo military training.[2391] The conditions for the hundreds of civilians forced to mine were poor; they were neither paid nor given adequate housing, food or medical treatment.[2392] As they were constantly supervised by armed men there was no possibility of escape.[2393] At some sites, such as Koakoyima, the civilians had to live in camps by the mines, where they erected their own shacks and stayed with their families.[2394] At Papany Ground civilians were forced to assist in mining as a condition for staying in the camps and receiving security.[2395] Some civilians were forced to live at the camps, and therefore mine for the RUF, as their houses had been burned down.[2396]

1249. From 1999 to 2000, civilians were captured and sent to Kono in order to mine diamonds for the RUF.[2397] On one occasion during this period, Sesay sent a message to Kallon in Makeni requiring civilians to be gathered and sent to Kono for mining.[2398] Approximately 400 civilians were gathered by Kallon from Makeni and its surrounding villages; they were jailed and then taken daily to Kono in trucks sent by Sesay.[2399]

1250. From 1998 to 2000, all mining was done by hand using basic instruments such as shovels, pickaxes sieves and pans. All diamonds found were handed over to the RUF Commanders in what was known as the "one-pile system", meaning that the RUF confiscated the entirety of the diamonds extracted.[2400] After 2000, the system changed to mostly mechanical mining and to a "two-pile system" in which the gravel was divided into two shares,

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[2389] Transcript of 22 June 2006, TF1-367, p. 52 (CS).
[2390] Transcript of 23 June 2006, TF1-367, pp. 49-50 (CS).
[2391] Transcript of 21 January 2005, TF1-071, pp. 120-123; Transcript of 10 November 2005, TF1-366, p. 5 (CS).
[2392] Transcript of 23 June 2006, TF1-367, pp. 50-51 (CS); Transcript of 21 July 2006, TF1-371, pp. 69-72 (CS).
[2393] Transcript of 20 July 2004, TF1-077, pp. 78-81; Transcript of 21 July 2004, TF1-077, p. 28; Transcript of 2 February 2005, TF1-012, pp. 30-37.
[2394] Transcript of 23 June 2006, TF1-367, p. 50 (CS).
[2395] Transcript of 11 July 2006, TF1-041, pp. 33-35 (CS).
[2396] Transcript of 23 June 2006, TF1-367, p. 51 (CS).
[2397] Transcript of 10 November 2005, TF1-366, p. 13 (CS).
[2398] Transcript of 10 July 2006, TF1-041, p. 62 (CS).
[2399] Transcript of 10 July 2006, TF1-041, pp. 62-64 (CS).
[2400] Transcript of 21 January 2005, TF1-071, pp. 103-110 (CS).

one for the RUF government and one for the miner.[2401] After the two pile system was in place, personal mining re-emerged, and civilians were allowed to keep the diamonds for resale. However, on Sesay's order, checkpoints were put up by the RUF around the Koidu mines.[2402] At these checkpoints, the RUF would take diamonds found on civilians or force the sale of the diamonds to the RUF at prices fixed by the RUF agents.[2403]

5.1.17.3. Mining in Tombodu and Bendutu

1251. On 16 December 1998, TF1-199 was amongst a group of 50 civilians abducted from Koidu by the RUF and forced to carry looted goods to Tombodu. While in Tombodu, Major Tactical told them that Sesay wanted all the abductees to be sent to Tombodu Bridge to mine.[2404] The civilians were taken to the bridge and they began mining by digging with shovels. The miners worked in shifts, guarded by about twenty small boys with guns. TF1-199 was working from sunrise until evening.[2405] The miners were dressed only in their underpants as their clothes were taken to discourage escape attempts. They were often bitten by mosquitoes and ants but they were not given any medication. As a result, some of them died and their bodies were thrown in the water. They were not paid for their labour and their food ration was one plantain a day.[2406]

1252. The mine where TF1-199 worked was very large. At times new civilians were brought in ropes or chains from Sandu Chiefdom.[2407] It was impossible to escape, as the miners did not have clothes, there was nowhere to run to, and there were checkpoints.[2408] If a diamond was found, it had to be given to Officer Med.[2409] Officer Med, the senior Mining Commander, reported to Sesay, who would at times visit the mining site.[2410]

1253. If diamonds were not found, the rebels held the civilians in Tombodu responsible,

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[2401] Transcript of 21 January 2005, TF1-071, p. 107-109 (CS).
[2402] Transcript of 25 January 2005, TF1-071, pp. 69, 75-76 (CS).
[2403] Transcript of 25 January 2005, TF1-071, pp. 69, 75-76, 120-123 (CS); Transcript of 10 March 2008, DIS-091, p. 52.
[2404] Transcript of 20 July 2004, TF1-199, pp. 17-19. TF1-077 testifies that this incident occurred in December 1999 during the recapture of Koidu (Transcript of 20 July 2004, TF1-077, pp. 76-78). The Chamber is satisfied that TF1-077 is mistaken about the year, since the recapture of Koidu by the RUF occurred in December 1998.
[2405] Transcript of 20 July 2004, TF1-199, pp. 107-110.
[2406] Transcript of 20 July 2004, TF1-199, pp. 110-111.
[2407] Transcript of 20 July 2004, TF1-199, pp. 78-80, 110-112; Transcript of 21 July 2004, TF1-199, pp. 28.
[2408] Transcript of 20 July 2004, TF1-077, pp. 113.
[2409] Transcript of 20 July 2004, TF1-077, p. 80; Transcript of 21 July 2004, TF1-077, p. 28.

accusing them of being witches and wizards and punishing them.[2411] The older civilians bore the brunt of this punishment. On the orders of Officer Med, older civilians were undressed, put in cells and then taken to the riverside where they were flogged and stabbed in the head.[2412] The civilians were then returned to the cells for the night and released for work the next day.

1254. When Sesay came to collect diamonds, the older civilians complained to him about their treatment. Sesay told them that they had to accept the punishment and be patient with the rebels.[2413] Sesay came frequently to Bendutu to collect diamonds.[2414]

1255. In Tombodu in April 1999, mining activity consisted primarily of civilians digging gravel manually from the ground, although sometimes Caterpillar machines were used. The gravel was washed with a machine within sight of the rebels who guarded the civilians with guns. The washing machine would shake the gravel and wash it with water, so that the heavier stones were removed and the diamonds emerged. When a diamond was found, the rebels took it without letting the civilians touch it. The diamonds were given to Sesay.[2415]

1256. The mining work would begin in the morning and continue throughout the day and at night. The first shift was from morning to midday, and another would start after this. The rebels gave the miners garri to eat.[2416] At the end of the working day, the miners were permitted to rest in sheds near the pit. They were not allowed to leave the sheds. There were initially about 150 miners brought from the other villages. However, when the mining activities became extensive there were more than 500 miners who were forced to work.[2417]

1257. Throughout 1999, there were over 200 workers in the mines at Tombodu where Officer Med was the mining Commander. In April 1999, Officer Med assembled civilians in Bendutu, Tombodu. He informed them that he had been sent by Sesay to start mining in Tombodu and ordered them to show him where he could find diamonds. The civilians informed him that they didn't know where diamonds were located. He then responded 'well

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[2410] Transcript of 20 July 2004, TF1-077, p. 80; Transcript of 21 July 2004, TF1-077, p. 30.
[2411] Transcript of 13 January 2005, TF1-304, pp. 32-35.
[2412] Transcript of 13 January 2005, TF1-304, pp. 37-38.
[2413] Transcript of 13 January 2005, TF1-304, pp. 34-38.
[2414] Transcript of 13 January 2005, TF1-304, pp. 30-33.
[2415] Transcript of 13 January 2005, TF1-304, pp. 17-31.
[2416] Garri is an African dietary staple of tapioca made from cassava tubers.
[2417] Transcript of 13 January 2004, TF1-304, pp. 23-26.

since you said you don't know where the diamonds are, we ourselves will look for the diamonds and we will ask you to start working'.[2418] When the civilians refused to work, Officer Med gave instructions to his bodyguards to force them to work. Shovels were distributed to the civilians and they started mining.[2419] As the mining was difficult, some of the younger civilians began to hide.

1258. Officer Med ordered the rebels to go into other villages to collect more young men. These civilians were tied with ropes and taken to Bendutu, where they were undressed and placed in a house. The civilians were then forced to mine for the rebels. The rebels guarded the mining pit with guns in order to prevent any of the civilians from escaping. The civilians were not paid for their work.[2420] Officer Med was in charge of distributing tools, equipment and food to the civilians working in Tombodu.[2421]

5.1.17.4. Private mining for RUF Commanders

1259. Mining in Kono was not limited to "government" mining organised by the RUF. Most of the bodyguards worked as mining bosses for their Commanders and civilians were forced to mine for them and were poorly treated. The Mining Commanders would process requests from Brigade Commanders to provide civilian manpower for mining requested by Sesay, Kallon, Superman, Alpha Fofana and other senior Commanders. Throughout 1999 and 2000, Sesay sent his own men, such as Bukero, Colonel Lion, Small Kamara, Officer Med, Captain Bayo, and Colonel Gibbo, to mine in Kono.[2422] Civilians mined for them at Kaisambo, Tombodu and Number 11.[2423] Kallon had a house in Kono where his bodyguards lived and supervised forced mining. Diamonds found by the civilians were not handed over to the RUF officials that supervised "government" mining, but rather were confiscated by RUF fighters working directly for the relevant Commander.[2424]

[2418] Transcript of 13 January 2005, TF1-304, pp. 18-12.
[2419] Transcript of 13 January 2005, TF1-304, pp. 19-20.
[2420] Transcript of 13 January 2005, TF1-304, pp. 20-23.
[2421] Transcript of 24 May 2007, Issa Sesay, pp. 83-84, 86.
[2422] Transcript of 21 January 2005, TF1-071, pp. 123-126 (CS).
[2423] Transcript of 23 June 2006, TF1-367, pp. 50-51 (CS).
[2424] Transcript of 21 January 2005, TF1-071, pp. 123-126 (CS); Transcript of 22 June 2006, TF1-367, pp. 49-51 (CS).

5.1.18. Forced military training at Yengema (December 1998 to January 2000)

1260. While most civilians were used to find food and perform domestic chores for the RUF, the stronger ones were combat trained to increase the military manpower of the RUF.[2425]

1261. After Kono had been recaptured in December 1998, Bockarie ordered Sesay to move the RUF training base from Bunumbu to Yengema. Sesay met with TF1-362 and instructed the witness to set up the base there.[2426] TF1-362 reported directly to Sesay between 1998 and 2000.[2427]

1262. The Yengema base operated from 1998 until disarmament. Civilians who had been captured in Kono were trained at the base.[2428] On arrival the rebels would register the names of the recruits and place them in platoons.[2429] The recruits underwent training in guerrilla tactics such as how to mounting ambushes. They were trained in infantry behaviour such as marching, parading and instructed on the importance of discipline. They also received armoury training on the use of the various types of rifles and artillery weapons available to them. They were further required to undergo physical and endurance training, through daily exercises such as jogging.[2430]

1263. Only those who were sick were excused from training. These civilians were taken to the medical unit, but if it became apparent that they were feigning illness, they were disciplined. Those who attempted to escape were sent to the advisor and then to the command.[2431]

1264. TF1-362 recalled that while at Yengema, six recruits (five men and one SBU) attempted to escape. TF1-362 reported this to Sesay, who responded that the six people should be killed. Shortly thereafter, Sesay's bodyguards came to the base and asked where the bodies of those killed were located. When TF1-362 explained that the attempted escapees had not yet been killed, the bodyguards executed three of them and two others were killed by rebel instructors at

[2425] Transcript of 22 July 2005, TF1-360, pp. 68-69. *See also* AFRC Transcript of 20 May 2005, TF1-334, pp. 4-5.
[2426] Transcript of 22 April 2005, TF1-362, p. 14 (CS). On RUF training bases throughout the Indictment period, see *infra* para. 1634.
[2427] Transcript of 22 April 2005, TF1-362, pp. 16-17 (CS).
[2428] Transcript of 22 April 2005, TF1-362, p. 14 (CS).
[2429] Transcript of 22 April 2005, TF1-362, p. 17 (CS).
[2430] Transcript of 22 April 2005, TF1-362, pp. 20, 21 (CS).
[2431] Transcript of 22 April 2005, TF1-362, pp. 17, 21 (CS).

the base. The SBU's life was spared by the advisor. [2432]

1265. After the recruits had "graduated" from the training, TF1-362 would send them to the various front line areas, such as at Yengema and Guinea Highway in Kono District according to instructions received from the second-in-command at the camp.[2433] The "wives" group would be sent back to their "husbands" who were RUF fighters and Commanders.[2434]

5.2. Legal Findings on the Crimes in Kono District

1266. The Prosecution alleges that the AFRC/RUF committed the crimes of unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9) and physical violence (Counts 10 and 11) between about 14 February 1998 and about 30 June 1998, and the crime of enslavement (Count 13) between about 14 February 1998 and about January 2000, in various locations throughout Kono District. The Prosecution further alleges that these crimes constitute acts of terrorism and collective punishment (Counts 1 and 2).

1267. The Chamber is satisfied that each of the following acts was committed intentionally by the perpetrators. The Chamber also recalls its finding that the Prosecution has proved beyond reasonable doubt that an armed conflict existed and that there was a widespread or systematic attack against the civilian population of Sierra Leone at the time.[2435] Unless otherwise stated below, the Chamber finds that the perpetrators' acts formed part of the widespread or systematic attack against the civilian population, and that the perpetrators were aware of this. In addition, unless otherwise stated, the Chamber is satisfied that a nexus existed between these acts and the armed conflict and that the perpetrators knew that the victims were not taking a direct part in hostilities.

5.2.1. Unlawful Killings (Counts 3 to 5)

1268. The Indictment alleges that "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

[2432] Transcript of 22 April 2005, TF1-362, pp. 21-23 (CS).
[2433] Transcript of 22 April 2005, TF1-362, pp. 25-26 (CS).
[2434] Transcript of 22 April 2005, TF1-362, pp. 26-28 (CS).
[2435] *Supra* paras 962-963.

Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Baiya."[2436] The Chamber has found that no evidence was adduced in respect of Willifeh, Foindu, Mortema and Baiya.[2437]

5.2.1.1. Koidu Town

5.2.1.1.1. Killings in attack on Koidu Town

1269. The Chamber finds that an unknown number of civilians were unlawfully killed during the February/March attack on Koidu in 1998, as charged in Counts 4 and 5.[2438]

1270. Although an unknown number of Kamajors were also killed in this attack, the Prosecution has not established that these Kamajors were *hors de combat* at the time. The Chamber thus finds that the Prosecution has not proven the essential elements of Count 4 or Count 5 in respect of this particular act.

5.2.1.1.2. Killing of civilians by Rocky and his men

1271. The Chamber finds that the killings of 30 to 40 civilians by Rocky with a machine gun in April 1998 constitutes murder as charged in Counts 4 and 5.[2439] From the manner in which Rocky fired indiscriminately into the crowd, and boasted about the number of people killed, we conclude that he intended to kill on a massive scale. The Chamber accordingly finds that this killing also constitutes an act of extermination as charged in Count 3.

1272. The Chamber is satisfied that the only reasonable inference to be drawn beyond reasonable doubt from the fact that rebels amputated the hands and feet of a 15 year old boy and threw him in a latrine pit in April 1998 is that as a result the boy died, and therefore finds that such an act constitutes murder as charged in Counts 4 and 5 of the Indictment.

5.2.1.2. Tombodu

5.2.1.2.1. Killings by Savage and Staff Alhaji

1273. The Chamber recalls its findings that in Tombodu between February and

[2436] Indictment, para. 48.
[2437] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 18.
[2438] *Supra* para. 1146.
[2439] *Supra* paras 1147-1151.

June 1998, AFRC/RUF members acting on the orders of AFRC Commander Savage and his deputy Staff Alhaji:[2440]

(i) executed about 200 civilians;

(ii) beheaded about 47 civilians;

(iii) killed three people whose corpses were disposed of by TF1-197; and

(iv) killed an unknown number of civilians by locking them in a burning house

1274. In light of the mass killings of civilians in Tombodu at this time, and noting that there were no active hostilities nor was there a significant Kamajor presence in Tombodu, the Chamber is satisfied that the three corpses disposed of by TF1-197 were civilians. The Chamber finds that the elements of murder, as charged in Counts 4 and 5, have been established in respect of each of the above killings.

1275. The Chamber further finds, considering these incidents collectively, that a massive number of civilians were killed in Tombodu during the period from about 14 February 1998 to 30 June 1998. The scale and gruesome nature of the killings guaranteed their notoriety, as reflected by the evidence of several witnesses that the killings were reported to and discussed by Commanders in other locations. In addition, the killings disclosed a repetitive pattern, with the disposal of bodies in Savage Pit and the command role of Savage and Staff Alhaji. The Chamber is therefore satisfied that the perpetrators intended to kill on a massive scale. The Chamber thus finds that these killings constitute extermination as charged in Count 3 of the Indictment.

5.2.1.2.2. Killing of Chief Sogbeh

1276. The Chamber further recalls that Chief Sogbeh was killed on the orders of Officer Med at the Tombodu Bridge mining site.[2441] The Chamber finds that this act constitutes an unlawful killing, as charged in Counts 4 and 5 of the Indictment.

5.2.1.3. Wendedu

1277. The Chamber finds that the killings of Waiyoh the Nigerian woman and eight family

[2440] *Supra* paras 1165-1169.

members of Sata Sesay in May and June 1998 in Wendedu are unlawful killings as charged in Counts 4 and 5 of the Indictment.[2442]

5.2.1.4. Penduma

1278. The Chamber finds that the killings of at least 29 civilians by rebels on the orders of Staff Alhaji in April 1998 in Penduma are unlawful killings, as charged in Counts 4 and 5 of the Indictment.[2443]

5.2.1.5. Yardu

1279. The Chamber is satisfied that the killing of six captured civilians by rebels in April 1998 in Yardu constitutes murder as charged in Counts 4 and 5 of the Indictment.[2444]

5.2.1.6. Koidu Buma

1280. In May 1998 in Koidu, Buma Rambo murdered 15 civilians with a cutlass.[2445] The Chamber finds that these killings amount to murder as charged in Counts 4 and 5 of the Indictment.

5.2.1.7. Killings near PC Ground

1281. The Chamber recalls the evidence of TF1-263 that five people were killed at a junction near PC Ground sometime in April or May 1998.[2446] The Chamber is satisfied that the persons killed were civilians and accordingly finds that these killings constitute murder as charged in Counts 4 and 5 of the Indictment.

1282. The Chamber notes that TF1-263 testified that Sesay was the person at the junction with the five civilians. We have found that Sesay was in Kailahun District sometime in May 1998, and we accordingly find the witness's identification of Sesay to be mistaken.[2447] We find that it is not established beyond reasonable doubt that Sesay was present during this incident.

[2441] *Supra* para. 1170.
[2442] *Supra* paras 1174-1176.
[2443] *Supra* paras 1191-1200.
[2444] *Supra* para. 1186.
[2445] *Supra* para. 1204.
[2446] *Supra* paras 1188-1189.
[2447] *Supra* para. 826.

5.2.2. Sexual Violence (Counts 6 to 9)

5.2.2.1. Rape (Count 6)

1283. The Prosecution alleges that between about 14 February 1998 and 30 June 1998, AFRC/RUF members raped hundreds of women and girls at various locations in Kono District, including Koidu, Tombodu, Kissi-town, Foendor, Wondedu and AFRC/RUF camps such as Kissi-town camp.[2448] The Chamber notes that evidence was adduced of rapes in Kono District without sufficient precision as to the time frame.[2449] The Chamber has limited its Legal Findings to incidents which we are satisfied occurred during the Indictment period.

1284. The Chamber has found that no evidence was adduced in respect of Tomendeh, Fokoiya and "Superman camp", despite the allegations in the Indictment.[2450] We further find that no evidence of rapes was adduced in relation to Foendor and Kissi Town.

1285. As an observation pertinent to the evidence on Count 6 in respect of all Districts, the Chamber notes that numerous witnesses used the term "rape" without the Prosecution seeking to clarify the use of the term and the conduct entailed by it. We are cognisant that it is natural for some witnesses to be reticent to provide explicit details of sexual violence, especially in Sierra Leonean society where stigma often attaches to victims of such crimes. Nonetheless, we consider it an unfortunate reality in post-conflict Sierra Leone that "rape" is a commonly understood concept. The Chamber is therefore of the view that the use of the term "rape" by reliable witnesses describes acts of forced or non-consensual sexual penetration consistent with the *actus reus* of the offence of rape. This approach may be reinforced by circumstantial evidence of violence or coercion.[2451]

5.2.2.1.1. Koidu

1286. The Chamber recalls the testimony of TF1-217 and TF1-141 that an unknown number of women were "raped" in Koidu during the February/March 1998 attack by AFRC/RUF rebels.[2452]

[2448] Indictment, para. 55.
[2449] *See*, for example, evidence of rape of TF1-016's daughter, *supra* para. 1213.
[2450] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 23-24.
[2451] *Supra* paras 147-148.
[2452] *Supra* paras 1152-1153.

1287. The Chamber observes that an atmosphere of violence prevailed in Koidu during the attack, noting the lootings, burnings and killings occurring simultaneously.[2453] The Chamber finds that in such violent circumstances the women were not capable of genuine consent. The Chamber accordingly finds that an unknown number of women were raped in Koidu, as charged in Count 6.

5.2.2.1.2. Tombodu

1288. The Chamber recalls the evidence that in Tombodu, Staff Alhaji pointed a gun at a woman, ordered her to lie down and then had sex with her.[2454] The Chamber finds that the elements of rape as charged in Count 6 are proved beyond reasonable doubt in respect of this incident.

5.2.2.1.3. Sawao, Penduma and Bumpeh

1289. The Chamber recalls its findings that:

(i) sexual acts were perpetrated on TF1-195 five times and an unknown number of times on five other women by rebels in Sawao;[2455]

(ii) sexual acts were perpetrated on TF1-217's wife eight times and on an unknown number of other women by rebels in Penduma;[2456]

(iii) sexual acts were perpetrated on TF1-218 twice by rebels in Bumpeh;[2457] and,

(iv) rebels inserted a pistol in the vagina of a female civilian in Bomboafuidu.[2458]

1290. The Chamber is satisfied from the evidence in respect of each of these incidents that the *actus reus* of rape is established. The perpetrators' acts occurred in the context of armed rebels capturing groups of civilians, and threatening, killing or physically injuring them. The Chamber is satisfied that in such circumstances the women did not consent and were in fact incapable of genuine consent. The Chamber accordingly finds that each of these acts constitute rape as charged in Count 6.

[2453] *Supra* paras 1140-1145.
[2454] *Supra* para. 1171.
[2455] *Supra* paras 1180-1181, 1185.
[2456] *Supra* paras 1193-1195.
[2457] *Supra* para. 1206.
[2458] *Supra* para. 1208.

5.2.2.2. Sexual Slavery and 'Forced Marriage' (Counts 7 and 8)

1291. The Chamber recalls its findings that:

(i) an unknown number of women were taken as "wives" by AFRC/RUF fighters in Koidu in February and March 1998;[2459]

(ii) an unknown number of women were forcibly kept as "wives" by RUF fighters in the civilian camp at Wendedu;[2460] and,

(iii) TF1-016 and her daughter were forcibly "married" to RUF members in Kissi-Town.[2461]

1292. In relation to the finding that TF1-217's sister was taken as a "wife" by Captain Bai Bureh in Wendedu, the Chamber observes that the Prosecution did not adduce evidence to prove the course of events after the rebels captured TF1-217's sister.[2462] In the absence of further detail, the Chamber finds that the Prosecution has not established beyond reasonable doubt the elements of Counts 7 and 8 in respect of this specific incident. However, the Chamber has taken this evidence into account to corroborate its finding that an unknown number of women were taken as wives and held as sex slaves by AFRC/RUF rebels in Wendedu in this time frame.

1293. The Chamber concludes from the evidence pertaining to Koidu and Wendedu that a consistent pattern of conduct existed towards women who were forced into conjugal relationships. These "wives" were "married" against their will, forced to engage in sexual intercourse and perform domestic chores, and were unable to leave their "husbands" for fear of violent retribution. The Chamber is satisfied that the "husbands" were aware of the power exercised over their "wives" and therefore were aware that their "wives" did not genuinely consent to the "marriage" or perform conjugal "duties" including sexual intercourse and domestic labour of their own free volition.

1294. The Chamber is accordingly satisfied that the perpetrators intended to deprive the women of their liberty by exercising powers attaching to the right of ownership over them, including by forcing the women to engage in acts of a sexual nature. The Chamber thus finds

[2459] *Supra* paras 1154-1155.
[2460] *Supra* paras 1178-1179.
[2461] *Supra* paras 1209-1214.
[2462] *Supra* para. 1178.

that in February to May 1998, the AFRC/RUF rebels forced an unknown number of women into sexual slavery in Koidu; that RUF rebels forced an unknown number of women into sexual slavery in Wendedu; and that an RUF member forced TF1-016 and her daughter into sexual slavery in Kissi-Town, as charged in Count 7.

1295. In relation to Count 8, the Chamber is satisfied that the conduct described by numerous reliable witnesses that rebels captured women and "took them as their wives" in Koidu and Wendedu satisfies the *actus reus* of 'forced marriage,' namely the imposition of a forced conjugal association. We consider that the phenomenon of "bush wives" was so widespread throughout the Sierra Leone conflict that the concept of women being "taken as wives" was well-known and understood.

1296. The Chamber observes that the conjugal association forced upon the victims carried with it a lasting social stigma which hampers their recovery and reintegration into society.[2463] This suffering is in addition to the physical injuries that forced intercourse commonly inflicted on women taken as "wives". The Chamber thus finds that the perpetrators' actions in taking "wives" in Koidu inflicted grave suffering and serious injury to the physical and mental health of the victims, and that the perpetrators were aware of the gravity of their actions.

1297. The Chamber is therefore satisfied that AFRC/RUF rebels forced an unknown number of women into marriages in Koidu; that AFRC/RUF rebels forced an unknown number of women into marriages in Wendedu; and that an RUF member forcibly married TF1-016 in Kissi-Town, which crimes constitute inhumane acts as charged in Count 8.

5.2.2.3. Outrages on Personal Dignity (Count 9)

5.2.2.3.1. Rape, Sexual Slavery and 'Forced Marriage'

1298. The Chamber finds that the acts of rape, sexual slavery and 'forced marriage,' as described above, also constitute in each case a severe humiliation, degradation and violation of the dignity of the victims and the perpetrators knew or ought to have known that that their acts would produce this effect.[2464]

[2463] *See* Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, p. 3578.

[2464] *Supra* paras 1283-1297.

1299. The Chamber thus finds that, as charged in Count 9, AFRC/RUF rebels committed outrages on personal dignity in respect of an unknown number of civilians in Koidu; that Staff Alhaji committed an outrage on the personal dignity of a civilian woman in Tombodu; that AFRC/RUF rebels committed outrages on personal dignity in respect of six women in Sawao, TF1-217's wife and an unknown number of other women in Penduma, TF1-218 in Bumpeh, and a woman in Bomboafuidu; that RUF rebels committed outrages on personal dignity in respect of an unknown number of women in Wendedu; and that an RUF rebel committed an outrage on the personal dignity of TF1-016's daughter.

1300. The Chamber recalls its finding that RUF member Kotor forcibly married TF1-016 in Kissi Town.[2465] Although the Chamber finds that Kotor was not an RUF fighter, we hold that war crimes may be committed by persons who are not members of a party to a conflict, as long as a functional relationship existed between the act and the conflict.[2466]

1301. The Chamber recalls that Kotor worked for the RUF over a period of many months, that he was among a group of RUF rebels who were offered an abducted "wife," and that he lived in a residence with armed RUF fighters from whom his "wife" was too afraid to attempt escape. The Chamber is satisfied from this evidence that Kotor enjoyed a close relationship with the RUF which permitted him to force TF1-016 into a "marriage". The Chamber thus finds that a clear functional relationship existed between Kotor's conduct and the armed conflict, such that Kotor's acts constitute an outrage on the personal dignity of TF1-016, as charged in Count 9.

5.2.2.3.2. Bumpeh

1302. The Chamber recalls that in February/March 1998, rebels in Bumpeh ordered a couple to have sexual intercourse in the presence of the other captured civilians and their daughter. After the enforced rape they forced the man's daughter to wash her father's penis.[2467]

1303. The Chamber recalls its finding that conduct which constitutes "any other form of sexual violence" may form the basis for charges of outrages upon personal dignity.[2468] The

[2465] *Supra* paras 1209-1214.
[2466] *See* Essen Lynching Case, p. 88; *Kayishema and Ruzindana* Trial Judgement, para. 188.
[2467] *Supra* para. 1205.
[2468] *Supra* para. 468.

Chamber observes, however, that the Prosecution did not particularise the conduct that constitutes other forms of sexual violence. The Prosecution also restricted its pleadings on sexual violence in the Indictment to crimes committed against "women and girls," thereby excluding male victims of sexual violence.[2469] The Prosecution therefore failed to adequately plead material facts which it then relied on as evidence of crimes, rendering the Indictment defective. The Chamber must therefore determine whether this defect in the Indictment was cured by clear, timely and consistent notice of the material facts to the Accused.

1304. The Prosecution disclosed a witness statement of TF1-218 in which it is alleged that rebels forced a couple to have sexual intercourse in public and abused the couple's 10 year old daughter.[2470] As this statement was disclosed prior to the start of the Prosecution case on 5 July 2004, the Chamber finds that this constitutes adequate notice of the material particulars of the form of sexual violence alleged. The Chamber finds that the defect in the Indictment was cured by clear, timely and consistent notice to the Defence.

1305. The Chamber is satisfied that these acts severely humiliated the couple and their daughter and violated their dignity. Given the nature of these acts and the public context in which they occurred, the Chamber further finds that the perpetrators possessed full knowledge that their actions degraded the personal dignity of the victims.

1306. The Chamber accordingly finds that AFRC/RUF rebels committed two outrages upon personal dignity, as charged in Count 9 of the Indictment.

5.2.2.3.3. Bomboafuidu

1307. The Chamber finds that the conduct of AFRC/RUF rebels in forcing approximately 20 captive civilians to have sexual intercourse with each other and slitting the genitalia of several male and female civilians constituted a severe degradation, harm and violation of the victims' personal dignity.[2471] The Chamber is satisfied that the perpetrators knew their actions would have this effect and so intended.

[2469] *See* Indictment, paras 54-60.
[2470] The Statement of Witness TF1-218 was disclosed to Sesay on 14 November 2003, to Kallon on 10 December 2003, and to Gbao on 17 December 2003.
[2471] *Supra* para. 1207.

1308. Again, the Chamber observes that the Prosecution did not particularise the conduct that constitutes other forms of sexual violence and did not plead forms of sexual violence committed against male victims. However, the Chamber finds that the Prosecution adequately notified the Defence of the material fact of this allegation by the disclosure of such information in the witness statement of TF1-192.[2472] Therefore, the Chamber finds that the defect in the Indictment was cured in a timely, clear and consistent manner causing no material prejudice to the Defence in the preparation of their case.

1309. The Chamber therefore finds that AFRC/RUF rebels in Bomboafuidu committed outrages upon the personal dignity of an unknown number of civilians, as charged in Count 9.

5.2.3. Physical Violence (Counts 10 and 11)

1310. The Indictment alleges that 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 Wondedu. The mutilations included cutting off limbs and carving ARFC and RUF on the bodies of civilians.[2473]

5.2.3.1. Tombodu

5.2.3.1.1. Amputations

1311. The Chamber finds that the rebels led by Staff Alhaji that amputated the hands of three civilians in April 1998 at Tombodu inflicted grave physical injury and permanent disfigurement on these civilians, therefore constituting acts of mutilation and inhumane acts, as charged in Counts 10 and 11.[2474]

5.2.3.1.2. Beating of TF1-197 near Tombodu

1312. The Chamber finds that the beating inflicted by rebels on TF1-197 in the course of looting a group of civilian petty traders inflicted severe physical injury on him, leaving him permanently disfigured by a scar on the front left hand side of his head.[2475] The Chamber finds

[2472] Statement of Witness TF1-192, Disclosed to Sesay on 14 November 2003, to Kallon on 10 December 2003 and to Gbao on 17 December 2003.
[2473] Indictment, para. 62.
[2474] *Supra* para. 1172.
[2475] *Supra* para. 1163.

this beating to constitute an act of mutilation and an other inhumane act, as charged in Counts 10 and 11.

5.2.3.1.3. Flogging of TF1-197

1313. The Chamber finds that the flogging of TF1-197 and his younger brother was sufficiently severe to constitute an act of unlawful physical violence as charged in Count 11, but that the evidence adduced does not establish beyond reasonable doubt that the flogging constituted an act of mutilation as charged in Count 10.[2476]

5.2.3.2. Wendedu

1314. The Chamber finds that the conduct of rebels in knocking out several teeth of TF1-015 constitutes an act of mutilation through permanent disfigurement and an inhumane act, as charged in Counts 10 and 11.[2477]

5.2.3.3. Kayima

1315. The Chamber finds that by carving "RUF" and/or "AFRC" on the bodies of 18 civilians, AFRC/RUF rebels committed acts of mutilation through permanent disfigurement and inhumane acts, as charged in Counts 10 and 11.[2478]

5.2.3.4. Sawao

5.2.3.4.1. Amputations

1316. The Chamber finds that the rebels who amputated the hands of five civilian men in Sawao inflicted grave physical injury and permanent disfigurement on these civilians, therefore constituting acts of mutilation and inhumane acts, as charged in Counts 10 and 11.[2479]

5.2.3.4.2. Beatings

1317. The Chamber also finds beyond reasonable doubt that captured civilians in Sawao were seriously beaten with sticks and the butts of guns.[2480] The Chamber is satisfied that these

[2476] *Supra* para. 1173.
[2477] *Supra* para. 1177.
[2478] *Supra* para. 1190.
[2479] *Supra* para. 1184.
[2480] *Supra* para. 1184.

actions resulted in serious injury to their bodies and to their physical health, and constitutes inhumane acts as charged in Count 11.

5.2.3.5. Penduma

1318. The Chamber finds that the amputation of the hands of at least three men in April 1998 in Penduma caused grave physical injury and permanent disfigurement to him, therefore constituting acts of mutilation and other inhumane acts, as charged in Counts 10 and 11.[2481]

5.2.3.6. Yardu

1319. The Chamber finds that the amputation of the arm of TF1-197 in April 1998 in Yardu caused grave physical injury and permanent disfigurement on him, therefore constituting an act of mutilation and other inhumane acts, as charged in Counts 10 and 11.[2482]

5.2.3.7. Tomandu

1320. The Chamber finds that the carving of 'RUF' into the backs and arms of several civilian men by rebels in approximately May 1998 in Tomandu caused grave physical injury and permanent disfigurement, therefore constituting acts of mutilation and other inhumane acts, as charged in Counts 10 and 11.

5.2.4. Abductions and Forced Labour (Count 13)

1321. The Prosecution alleges that "between about 14 February 1998 to January 2000, 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, Wondedu, Tomendeh. At these locations the civilians were used as forced labour, including domestic labour and as diamond miners in the Tombodu area."[2483]

5.2.4.1. Use of civilians for forced labour by AFRC/RUF forces

1322. The Chamber recalls that in the period following the ECOMOG Intervention in February 1998 and until March 1998, AFRC/RUF fighters, following daily orders, abducted civilians from several villages in Kono District with the intent to use them for forced labour,

[2481] *Supra* paras 1197-1199.
[2482] *Supra* para. 1187.

including the carrying of loads to and from locations, food-finding missions, and domestic labour.[2484] These civilians worked under coercion and fear that if they did not carry out their tasks, they would be killed. The civilians were not compensated for their work and did so against their will. The Chamber finds that the physical movement of civilians was controlled, that the use of violence and the threat of violence by armed AFRC/RUF fighters monitoring their labour amounts to a deprivation of liberty.

1323. The Chamber is therefore satisfied beyond reasonable doubt that between February 1998 and March 1998 civilians were forced to work by AFRC/RUF fighters and to carry loads to and from different areas of Kono District. Consequently, the Chamber finds with respect to the forceful use of civilians to carry loads and perform other types of labour that all the essential elements of enslavement, a crime against humanity, have been established as charged in Count 13 of the Indictment.

5.2.4.2. Forced labour in RUF Camps

1324. The Chamber has found that hundreds of civilians were detained in RUF camps throughout Kono District between February and December 1998.[2485] The Chamber concludes that the RUF had a planned and organised system in which civilians were intentionally forced to engage in various forms of forced labour throughout the District. Civilians were confined in 'camps' and used to mobilise arms, ammunition, food or any other loads according to the necessities and orders of the RUF, both within Kono District and between Kono and Kailahun Districts. The civilians were also forced into domestic labour or any work that was required by the rebels at their behest. Any produce from that labour would, in turn, become the property of the RUF and for their exclusive use.

1325. The RUF camps shifted location according to the front lines of the armed conflict and included Superman Ground, Wendedu and Kunduma. Those interned at these camps were not able to freely move outside the confines of the camp and were often told that this was for their own "protection". While some civilians did seek the camps for their own safety, the

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[2483] Indictment, para. 71.
[2484] *Supra* paras 1215-1217.
[2485] *Supra* paras 1218-1239. Although it is found that civilian camps remained in existence until disarmament in 2001, the Chamber is not satisfied on the evidence adduced pertaining to the period December 1998 to January 2000 that the control over civilians in Kono District was such that they remained enslaved.

system of "protection" set up by the RUF and implemented by the G5 was intended to control the population, deny civilians of any freedom of movement, confine them to the RUF camps and use them as forced labour in furtherance of the RUF war efforts. The Chamber recalls the testimony of TF-071, who explained that the RUF's motivation to "protect" the civilians was based on keeping the civilians under RUF supervision so that their position was not revealed, and that the RUF would have the civilians believe that if they escaped they would meet certain death at the hands of the enemy. The Chamber is of the view that this fear-based manipulation was in furtherance of the RUF system of forced labour.

1326. The Chamber finds that the perpetrators intentionally exercised power over the civilians, who were guarded and supervised by armed fighters. The civilians were deprived of their liberty and forced to work under coercion and threat. Further, the Chamber finds that the civilians worked under oppressive conditions – they were treated as slaves, forced to work without proper compensation or food and, in the event that civilians refused or were unable to work, they were beaten or executed. The Chamber is thus satisfied that RUF rebels exercised powers attaching to the right of ownership over these civilians.

1327. Consequently, the Chamber finds, with respect to forced labour in RUF camps, that all the elements of enslavement have been met, as charged under Count 13 of the Indictment.

5.2.4.3. Forced mining in Tombodu and throughout Kono District

1328. The Chamber recalls its Factual Findings that from December 1998 until January 2000, which marks the end of the Indictment period for Count 13 in Kono District, hundreds of civilians were abducted and forced to work in mining sites in Tombodu and throughout Kono District.[2486] Civilians were guarded by armed fighters, who flogged or killed civilians for disobeying orders. The mistreatment of civilians ranged from transporting them in physical restraints such as ropes or chains to providing them with little or no food and forcing them to work naked. Diamonds were confiscated by the rebels and civilians were not compensated.

1329. The Chamber does not find credible the testimony of witnesses that no civilians were forced to mine in Kono District.[2487] Such assertions are inconsistent with the evidence, which

[2486] *Supra* paras 1251-1259.
[2487] *See* Sesay Final Trial Brief, paras. 581-584 and 590-596, and witness testimony cited therein.

we accept as reliable, that some civilians complained or attempted to hide; but civilians were not free to leave and checkpoints surrounded mining sites. Moreover, the Chamber is satisfied that for hundreds of civilians, genuine consent was not possible in the environment of violence and degradation existing in the Tombodu mining fields at the time.

1330. The Chamber finds that AFRC/RUF forces intentionally exercised powers attaching to the right of ownership over these abductees. Accordingly, we find that the Prosecution has established beyond reasonable doubt that hundreds of civilians were enslaved in Tombodu, therefore constituting enslavement as charged in Count 13.

5.2.5. Pillage (Count 14)

1331. The Prosecution alleges that "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."[2488]

1332. No evidence was adduced with respect to Foindu and Yardu Sando, despite the allegations in the Indictment, as this Chamber previously found in its Rule 98 Decision.[2489]

1333. The Chamber recalls that the burning of property does not satisfy the underlying elements of pillage. Therefore, the Chamber, to determine the commission of the crime of pillage, will only examine the evidence relating to the acts of looting.

1334. Although proof of pillage under international law does not require that the items appropriated to be of significant value, we recall that the jurisdiction of the Special Court is only to be exercised in respect of serious violations. As we have stated, whether a violation is serious may be determined by reference to the collective scale of the looting, for instance by considering the number of people from whom property is appropriated.[2490] The Chamber is satisfied that the appropriation of property of low monetary value by AFRC/RUF rebels was widespread in Kono District during the Indictment period and therefore finds such acts to be sufficiently serious to constitute pillage, as charged in Count 14 of the Indictment.

[2488] Indictment, para. 80.
[2489] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 34.
[2490] *Supra* paras 209-210.

5.2.5.1. Tombodu

1335. The Chamber is satisfied that the appropriation by rebels of a bicycle, about Le 500.000 and other items including cigarettes from TF1-197 occurred without his consent and would have resulted in serious economic detriment to him.[2491] The Chamber finds this act to constitute an act of pillage as charged in Count 14.

5.2.5.2. Koidu Town

5.2.5.2.1. Looting during February/March attack on Koidu

1336. The Chamber has found that AFRC/RUF fighters engaged in a systematic campaign of looting upon their arrival in Koidu, marking the continuation of Operation Pay Yourself.[2492] The evidence demonstrates that rebels appropriated many items of significant value, such as vehicles, but also that the appropriation of minor items such as foodstuffs occurred on a sufficiently large scale to cumulatively constitute a serious violation.

1337. The Chamber is satisfied that a significant proportion of the items appropriated belonged to civilians, and that the only reasonable inference to be drawn from the evidence is that the owners did not consent to the appropriation by the rebels. The Chamber accordingly finds that AFRC/RUF rebels committed an unknown number of acts of pillage in Koidu as charged in Count 14.

5.2.5.2.2. Looting of Tankoro Bank

1338. The Chamber finds that the theft of funds from the Tankoro Bank by a group of AFRC and RUF fighters constitutes an unlawful appropriation of civilian property without the consent of the owner and that sufficient funds were taken to constitute a serious violation.[2493] The Chamber accordingly finds this constitutes an act of pillage as charged in Count 14.

5.2.5.3. Pillaging of diamonds

1339. The Chamber notes the Prosecution's submission that AFRC/RUF rebels systematically and unlawfully appropriated diamonds by mining throughout Kono District, but

[2491] *Supra* para. 1164.
[2492] *Supra* paras 1140-1144.
[2493] *Supra* para. 1145.

declines to consider such submissions as this conduct was not particularised in Count 14 of the Indictment.[2494] The Indictment clearly charges the pillage of civilian property and does not allege that this included the diamond resources of Sierra Leone. The Chamber therefore declines to consider the criminality of such acts in Kono District.

5.2.6. Acts of Terrorism (Count 1)

1340. The Prosecution alleges that members of the AFRC/RUF committed the above described acts of unlawful killings, sexual violence, physical violence, enslavement and pillage "as part of a campaign to terrorise the civilian population of Sierra Leone."[2495] In relation to Kono District, the alleged acts of terrorism took place between 14 February 1998 and 30 June 1998.

5.2.6.1. Unlawful Killings as Acts of Terrorism

1341. The Chamber recalls its findings on unlawful killings in Kono District, and in particular:

(i) AFRC/RUF fighters killed an unknown number of civilians during the February/March 1998 attack on Koidu Town;[2496]

(ii) The killing in Koidu Town of 30 to 40 civilians by Rocky and his men in April 1998;[2497]

(iii) The killing in Koidu Town by rebels of a 15 year old boy by amputating and throwing him into a latrine pit in April 1998;[2498]

(iv) The killing in Tombodu of an unknown number of civilians by Savage and Staff Alhaji;[2499]

(v) The killing in Tombodu Bridge of Chief Sogbeh by Officer Med;[2500]

(vi) The killing in Wendedu of Sata Sesay's eight family members in May and June 1998;[2501]

[2494] Prosecution Final Trial Brief, paras 996-1002.
[2495] Indictment, para. 44.
[2496] *Supra* paras 1269-1270.
[2497] *Supra* para. 1271.
[2498] *Supra* para. 1272.
[2499] *Supra* paras 1273-1275.
[2500] *Supra* para. 1276.
[2501] *Supra* para. 1277.

(vii) The killing of at least 29 civilians in Penduma by orders of Staff Alhaji in April 1998;[2502] and

(viii) The killing of six captured civilians in Yardu in April 1998.[2503]

1342. The Chamber is satisfied that there is an overwhelming amount of evidence that point to the execution of policies that promoted violence, targeted civilians, civilian objects in order to spread terror among the civilian population.

1343. The unlawful killings noted above were all committed widely and openly, without any rationale objective, except to terrorise the civilian population into submission. Therefore, the Chamber finds that the perpetrators of these unlawful killings acted with the specific intent to spread terror among the civilian population. Consequently, we find that these acts constitute acts of terrorism as charged in Count 1 of the Indictment.

1344. In relation to the unlawful killing of Waiyoh, the Nigerian woman who was killed in Wendedu, we find that this killing was done on the specific suspicion of her possible collaboration with ECOMOG given her nationality and the AFRC/RUF paranoia regarding their enemies.[2504] Consequently, we find that this killing was not done with the specific intent to terrorise the civilian population.

1345. Similarly, for the unlawful killing in Koidu Buma[2505] and near PC Ground[2506], we find that the Prosecution has not established that these crimes were committed with the specific intent to terrorise the civilian population and decline to make the corresponding finding on Count 1 for these crimes.

5.2.6.2. Sexual Violence as Acts of Terrorism

5.2.6.2.1. General Considerations

1346. In making its Legal Findings on sexual violence as an act of terrorism committed against the civilian population, the Chamber has considered the body of evidence adduced in relation to the various Districts of Sierra Leone as charged in the Indictment.

[2502] *Supra* para. 1278.
[2503] *Supra* para. 1279.
[2504] *Supra* para. 1277.
[2505] *Supra* para. 1280.
[2506] *Supra* paras 1281-1282.

1347. The Chamber observes that sexual violence was rampantly committed against the civilian population in an atmosphere in which violence, oppression and lawlessness prevailed. The Chamber finds that the nature and manner in which the female population was a target of the sexual violence portrays a calculated and concerted pattern on the part of the perpetrators to use sexual violence as a weapon of terror. These fighters employed perverse methods of sexual violence against women and men of all ages ranging from brutal gang rapes,[2507] the insertion of various objects into victims' genitalia,[2508] the raping of pregnant women[2509] and forced sexual intercourse between male and female civilian abductees.[2510] In one instance, the wife of TF1-217 was raped by eight rebels as he and his children were forced to watch. TF1-217 was ordered to count each rebel as they consecutively raped his wife, "he had no power not to" as the rapists laughed and mocked him.[2511] After the ordeal, her rapists took a knife and stabbed her in front of the entire family.[2512]

1348. The Chamber is satisfied that the manner in which the rebels ravaged through villages targeting the female population effectively disempowered the civilian population and had a direct effect of instilling fear on entire communities. The Chamber moreover finds that these acts were not intended merely for personal satisfaction or a means of sexual gratification for the fighter. We opine that the savage nature of such conduct against the most vulnerable members of the society demonstrates that these acts were committed with the specific intent of spreading fear amongst the civilian population as a whole, in order to break the will of the population and ensure their submission to AFRC/RUF control.

1349. We note that the physical and psychological pain and fear inflicted on the women not only abused, debased and isolated the individual victim, but deliberately destroyed the existing

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[2507] *See* TF1-217 who describes the rape of five women in front of children and other civilians: Transcript of 22 July 2004, TF1-217, pp. 23-24. TF1-305 was gang raped by eight rebels while her parents were guarded by armed rebels, after the rape she felt dizzy and bled profusely and she stated that she lay on the ground feeling "as if I was in the hands of death itself": Transcript of 27 July of 2004, TF1-305, pp. 54-57.

[2508] TF1-192 was captured along with 20 other civilians by armed fighters and the men inserted a pistol into the vagina of one of the female captives, leaving it inside her overnight, Transcript of 1 February 2005, TF1-192, p. 68.

[2509] DIS-157 testified of the rape of a woman who was eight months pregnant by an RUF fighter in Daru in 1998. The victim reported the rape and DIS-157 and other MP Commanders ordered Jalloh to be shot after he admitted to the rape: Transcript of 24 January 2008, DIS-157, pp. 124-126.

[2510] TF1-064 was a nursing mother who was forced to engage in sexual intercourse with another abductee, a Temne man. The rebels spread her legs, cut her and forced the civilian man to have sex with her while her child stood by crying and the rebels flogged the child and mother: Transcript of 19 July 2004, TF1-064. p. 49.

[2511] Transcript of 22 July 2004, TF1-217, pp. 17-19, 30.

[2512] Transcript of 22 July 2004, TF1-217, pp. 17-19, 30.

family nucleus, thus undermining the cultural values and relationships which held the societies together.[2513] Victims of sexual violence were ostracised, husbands left their wives, and daughters and young girls were unable to marry within their community.[2514] The Chamber finds that sexual violence was intentionally employed by the perpetrators to alienate victims and render apart communities, thus inflicting physical and psychological injury on the civilian population as a whole.[2515] The Chamber finds that these effects of sexual violence were so common that it is apparent they were calculated consequences of the perpetrators' acts.

1350. The Chamber recalls the testimony of TF1-029 describing the general perception among the rebels that "soldiers who captured civilians had a right to rape them and make them their wives."[2516] The Chamber considers this statement indicative of the atmosphere of terror and helplessness that the rebel forces created by systematically engaging in sexual violence in order to demonstrate that the communities were unable to protect their own wives, daughters, mothers, and sisters.[2517] Rebels invaded homes at random and raped women.[2518] In this way the AFRC and RUF extended their power and dominance over the civilian population by perpetuating a constant threat of insecurity that pervaded daily life and afflicted both women and men.[2519]

1351. The Chamber has further found that countless women of all ages were routinely captured and abducted from their families, homes and communities and forced into prolonged exclusive conjugal relationships with rebel as 'wives.'[2520] The practice of 'forced marriages' and sexual slavery stigmatised the women, who lived in shame and fear of returning to their

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[2513] Exhibit 146, Human Rights Watch, "We'll Kill You if You Cry", p. 4.

[2514] According to TF1-369, fear of discrimination and stigmatisation remains an enormous barrier to the effective reintegration of victims and their families, which prevented the victims from returning to their communities, those who have been reintegrated struggle with psychological trauma and most live in denial along with their families, Exhibit 138, Expert Report Forced Marriage, p. 12088.

[2515] RUF rebels captured TF1-305 and ordered her mother to make a choice between killing her or taking her away before eight of their gang raped her; Transcript of 27 July 2004, TF1-305, pp. 54-57

[2516] Transcript of 28 November 2005, TF1-029, pp. 12-13; TF1-196 also heard rebels say that they were going to rape virgins and an RUF rebel threatened to kill TF1-196 if she refused sexual intercourse. She felt shame because she was raped in public: Transcript of 13 July 2004, TF1-196, pp. 26-28.

[2517] TF1-016's daughter complained of having been raped by an RUF rebel called Alpha, however TF1-016 told her daughter to be patient as they were powerless and "it was war" so nothing could be done: Transcript of 21 October 2004, TF1-016, pp. 18-19.

[2518] Transcript of 22 July 2004, TF1-217, p. 10.

[2519] The Chamber notes that the Prosecution restricted its pleading of sexual violence in the Indictment to crimes against women: *see* paras 54-60.

[2520] *Infra* paras 1406-1408.

communities after the conflict.[2521] The Chamber finds that the pattern of sexual enslavement employed by the RUF was a deliberate system intended to spread terror by the mass abductions of women, regardless of their age or existing marital status, from legitimate husbands and families.

1352. In light of the foregoing, the Chamber finds that rape, sexual slavery, 'forced marriages' and outrages on personal dignity, when committed against a civilian population with the specific intent to terrorise, amount to an act of terror. The Chamber considers that the evidence on the record establishes that members of the AFRC/RUF regularly committed such acts of sexual violence as part of a campaign to terrorise the civilian population of Sierra Leone.

5.2.6.2.2. Koidu Town

1353. The Chamber recalls that an unknown number of civilians were raped in Koidu sometime in February and March 1998.[2522] These rapes were committed on a regular basis by rebels who forcibly entered random civilian homes at night. The Chamber is satisfied on this basis that the perpetrators of these acts of violence against civilians used rape as a deliberate tactic to terrorise the civilian population of Koidu. The Chamber accordingly finds that AFRC/RUF rebels committed an unknown number of acts of terrorism in Koidu in February and March 1998 as charged under Count 1 of the Indictment.

5.2.6.2.3. Rapes in other locations

1354. We find that the rape by Staff Alhaji in Tombodu, the rapes in Sawao, Penduma, Bumpeh and Bomboafuidu and the outrages on personal dignity committed in Bumpeh and Bomboafuidu reflect a consistent pattern of conduct openly exhibited by the rebel forces in their encounters with civilians.[2523] The Chamber notes that in each case the rapes were committed in front of other civilians. In Penduma, women were lined up and rebels selected their victim one by one. A husband was forced at gun point to witness the rape of his wife. In Bumpe, victims were forced to laugh and told their lives were over prior to being compelled to have intercourse with each other. In Sawao, as in Penduma, the rapes of multiple women were

[2521] Exhibit 138, Expert Report Forced Marriage, p. 12097-98; A number of these 'wives' have relocated to other communities who fled from their rebel captors to return to their communities were not welcomed by their communities thus had to return to their abusers, Exhibit 138, Expert Report Forced Marriage, p. 12089.
[2522] *Supra* paras 1152-1155.

committed at the same time as men were killed or had their limbs amputated. In Bomboafuidu, a husband and wife and their daughter were openly selected from a group of civilians as the rebels' victims.

1355. The Chamber is satisfied from this evidence that the public nature of the crimes was a deliberate tactic on the part of the perpetrators to instil fear into the civilians. Given the geographic and temporal proximity of these crimes to each other, and to the killings and amputations in Kono District, the Chamber finds that the rebels regularly used rape and other forms of sexual violence to spread terror among the civilian population of Kono District. We accordingly find that these crimes constitute acts of terrorism as charged in Count 1 of the Indictment.

5.2.6.3. Sexual Slavery, 'Forced Marriage' as Acts of Terrorism

1356. The Chamber recalls its general considerations on sexual violence as acts of terrorism.[2524] As found above, the Chamber is satisfied that because of the consistent pattern of conduct demonstrated in the exercise of the sexual violence the above findings of sexual slavery and 'forced marriage' were committed with the requisite and specific intent to terrorise the civilian population. Accordingly, we find that the Prosecution has proven Count 1 beyond reasonable doubt in relation to these acts.

5.2.6.4. Physical Violence as Acts of Terrorism

1357. The Chamber is satisfied that the amputations in Tombodu, Yardu and Penduma, the amputations and beatings in Sawao and the carvings in Kayima and Tomandu were acts of violence directed against civilians with the specific intent of terrorising the civilian population.[2525] The amputations and carvings practised by the AFRC/RUF were notorious. These crimes served as a permanent, visible and terrifying reminder to all civilians of the power and propensity to violence of the AFRC and RUF. The Chamber finds that the perpetrators of these crimes specifically intended by their conduct to terrorise the civilian population. The Chamber thus finds that the amputations in Tombodu, Sawao, Penduma and Yardu and the carvings in Kayima are acts of terrorism as charged in Count 1 of the Indictment.

[2523] *Supra* paras 1171, 1180-1183, 1191-1195, 1205-1208.

[2524] *Supra* paras 1346-1352.

1358. With regard to the beating of TF1-097 in March 1998 and the flogging of TF1-097 and his brother in April 1998,[2526] the Prosecution has not adduced evidence to establish that the specific intent of the perpetrators was to terrorise the civilian population. Similarly, it was not shown in the evidence that the mutilation of TF1-015 was specifically intended to terrorise the civilian population, but rather as a capricious punishment instilled on him by Captain Banya.[2527] For these reasons, we decline to make the corresponding finding on Count 1 for these crimes.

5.2.6.5. Enslavement as Acts of Terrorism

1359. The Chamber recalls its findings regarding the widespread enslavement of civilians in Kono District.[2528] The Chamber does not discount that the abduction and detention of persons from their homes and their subjection to forced labour, including forced mining and living in RUF camps, under conditions of violence spread terror among the civilian population. However, the Chamber finds this "side-effect" of terror is not sufficient to establish the specific intent element of the crime with regards to these acts.

1360. The Chamber finds that the primary purpose behind commission of abductions and forced labour was not to spread terror among the civilian population, but rather was primarily utilitarian or military in nature. Even where abductions and forced labour occurred simultaneously with other acts of violence otherwise examined by this Chamber with regards to the crime of terror, the Chamber finds that such acts cannot be considered to have been committed with the primary intent to terrorise civilians.

5.2.6.6. Looting and Burning as Acts of Terrorism

5.2.6.6.1. Attack on Koidu Town and Tombodu

1361. The burning of an unknown number of civilian homes during the attack on Koidu in February/March 1998 and in Tombodu in the period from February to April 1998 was intended to punish civilians for failing to support the AFRC/RUF and to prevent civilians

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[2525] *Supra* paras 1172, 1184-1185, 1187, 1190 and 1197-1198.
[2526] *Supra* para. 1173.
[2527] *Supra* para. 1177.
[2528] *Supra* paras 1322-1330.

from remaining in these towns.[2529] The Chamber accordingly finds that the perpetrators directed these acts of violence against civilian property with the intent of spreading terror among the civilian population as charged in Count 1.

5.2.6.6.2. Retreat from Koidu Town

1362. In contrast to the attack on Koidu and the burnings in Tombodu, the evidence pertaining to the retreat from Koidu in mid-April 1998 does not establish beyond reasonable doubt that the burnings were acts of violence wilfully directed at civilian property which the perpetrators specifically intended to cause extreme fear amongst the civilian population. The Chamber observes that, according to the evidence, houses of fighters were burned to punish them for refusing to fight and infrastructure was burned to prevent its use by ECOMOG forces who were advancing on Koidu. The evidence is insufficient to establish whether the burning of civilian homes was intended to terrorise the remaining civilians or to prevent ECOMOG from using the town as a base. We therefore find that the specific intent element of Count 1 has not been proved in respect of these acts of burning and decline to make a finding for this act.

5.2.6.6.3. Koidu Town

1363. The Prosecution has not established beyond reasonable doubt that the pillage of civilian property during the attack on Koidu constitute acts of terrorism. The declaration of Operation Pay Yourself suggests that AFRC/RUF rebels appropriated civilian property for their personal gain. In addition, there is some evidence that property such as vehicles may have been appropriated for logistical and military purposes. Although the pillaging occurred in the context of an attack on the civilian population of Koidu in which numerous crimes were committed, the Chamber is not satisfied that the specific intent of the perpetrators was to spread terror.

1364. Similarly, it can be inferred that the rebels who appropriated funds from the Tankoro Bank in Koidu were motivated by profit. In the Chamber's view, and in the absence of evidence to the contrary, the conduct of the perpetrators was neither capable of spreading terror among the civilian population, nor designed to do so. Accordingly, we find that the Prosecution has not proved Count 1 beyond reasonable doubt in relation to these acts.

[2529] *Supra* paras 1140-1144, 1159-1160.

5.2.6.6.4. Tombodu

1365. The Chamber recalls that AFRC/RUF rebels unlawfully appropriated property from TF1-197, who engaged in petty trading near Tombodu.[2530] Although the rebels repeatedly harassed TF1-197 and other civilians with whom he traded, the Chamber does not find that the specific intent of the rebels was to terrorise the civilian population. Rather, we find that the rebels were primarily motivated by the opportunity to appropriate money and goods. Accordingly, we find that the Prosecution has not proved Count 1 beyond reasonable doubt in relation to these acts.

5.2.7. Collective Punishment (Count 2)

1366. The Prosecution alleges that members of the AFRC/RUF committed the above described acts of unlawful killings, sexual violence, physical violence, enslavement and pillage "as part of a campaign 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."[2531] In relation to Kono District, the alleged acts of collective punishment took place between 14 February 1998 and 30 June 1998.

5.2.7.1. Killings as Collective Punishment

5.2.7.1.1. Extermination by Rocky in Koidu

1367. The Chamber is satisfied that Rocky exterminated a group of civilians in Koidu with the intent of indiscriminately and collectively punishing them for perceived support for ECOMOG and the Kabbah Government.[2532] The Chamber recalls in this regard Rocky's admonition to the crowd prior to the massacre:

> Those of you who were clapping today, let me tell you now [...] We are Junta rebels [...] As you see in Kono now, we are now in control. We own this place now [...] We are coming to send you to Tejan Kabbah for you to tell him that we own here.[2533]

1368. The Chamber thus finds that Rocky's conduct constitutes an act of collective

[2530] *Supra* para. 1164.
[2531] Indictment, para. 44.
[2532] *Supra* paras 1147-1151.
[2533] Transcript of 27 January 2005, TF1-015, p. 123.

punishment as charged in Count 2 of the Indictment.

5.2.7.1.2. Killings in Tombodu

1369. Between February 1998 and March 1998, AFRC/RUF rebels acting on the orders of AFRC Commander Col. Savage executed about 200 civilians in Tombodu for cheering for ECOMOG troops.[2534] This evidence establishes that the intent of the perpetrators was to collectively punish the civilians for acts for which they may or may not have been responsible. Accordingly, the Chamber finds that these killings are an act of collective punishment, as charged in Count 2 of the Indictment.

5.2.7.1.3. Other Unlawful Killings

1370. In relation to the other killings committed by rebels under the command of Savage and Staff Alhaji in Tombodu, the Prosecution has not adduced evidence to prove the particular intent of the perpetrators.[2535] Further, the Prosecution has not adduced evidence to establish that the killings of an unknown number of civilians during the attack on Koidu in February/March 1998; the killing of Chief Sogbeh in Tombodu; the killing of Waiyoh in Wendedu; the killing of six civilians at Yardu, the killing of 15 civilians in Koidu Buma; or, the killing of at least 29 civilians in Penduma were carried out with the intent of collectively punishing the victims for acts for which they may or may not have been responsible.[2536]

1371. In a context where civilians were frequently targeted merely to terrorise the population, there is reasonable doubt as to whether the perpetrators of these killings also intended to collectively punish their victims for perceived acts or omissions. Even though there was a pattern of conduct to punish the civilian population for their alleged support for ECOMOG and the democratically elected government, it is not the only reasonable inference that these particular crimes were committed with the specific intent required by Count 2. Accordingly, we find that the Prosecution has not proven the elements required to make a finding under Count 2 in relation to these incidents.

5.2.7.2. Physical Violence as Collective Punishment

[2534] *Supra* paras 1165-1169.
[2535] *Supra* paras 1165-1169.
[2536] *Supra* paras 1146, 1170, 1174, 1186, 1195-1196, 1204.

5.2.7.2.1. Amputations and carvings

1372. The Chamber is satisfied that the amputations in Tombodu, Penduma and Yardu, and the beatings and amputations in Sawao were part of a pattern of punishments indiscriminately inflicted against civilians whom the rebels accused of supporting the elected Government of President Kabbah.[2537] There is overwhelming evidence that demonstrates that in particular the amputations were solely committed with the intent to punish the population. Rebels variously accused the victims of amputations of being "Kabbah's people" or maliciously informed them that they could go to President Kabbah for new hands. However, the Chamber is not satisfied that the carvings on civilian bodies in Kayima and Tomandu were part of such a pattern and therefore find that Count 2 was not proved in relation to the carving of civilian bodies.

1373. The Chamber thus finds that the amputations in Tombodu, Sawao, Penduma and Yardu, but not the carvings in Kayima and Tomandu, are acts of collective punishment committed by AFRC/RUF rebels, as charged in Count 2 of the Indictment.

5.2.7.2.2. Other acts of Physical Violence

1374. The Prosecution has not adduced evidence to establish that the AFRC/RUF rebels who beat TF1-197 in March 1998, flogged TF1-197 and his brother in April 1998 and mutilated TF1-015 intended to collectively punish the victims for acts for which they may or may not have been responsible.[2538] The Chamber therefore finds that these crimes did not constitute acts of collective punishment as charged in Count 2 of the Indictment.

5.2.7.3. Acts of Burning as Collective Punishment

5.2.7.3.1. Attack on Koidu and Tombodu

1375. The Chamber is satisfied that the acts of burning committed during the attack on Koidu in February/March 1998 and in Tombodu in the period from February 1998 to April 1998 were intended to collectively punish civilians for failing to support the AFRC/RUF.[2539] In Koidu, this is clear from Sesay's instruction that homes were to be burned on the basis that civilians were traitors and were not to be tolerated. Similarly, Bockarie justified the order to

[2537] *Supra* paras 1172, 1184-1185, 1187, 1190 and 1197-1198.
[2538] *Supra* paras 1173 and 1177.
[2539] *Supra* paras 1140-1144, 1159-1160.

burn homes in Tombodu as retribution for the civilians moving into the bush to escape the rebels.

1376. The Chamber thus finds that AFRC/RUF rebels committed acts of collective punishment by burning civilian property in Koidu and Tombodu, as charged in Count 2.

5.2.7.3.2. Retreat from Koidu

1377. In relation to the retreat from Koidu in mid-April 1998, the evidence does not prove that acts of burning were carried out by AFRC/RUF rebels with the specific intent of collectively punishing the civilian population of Koidu.[2540] The Chamber therefore finds that these crimes did not constitute acts of collective punishment as charged in Count 2.

5.2.7.4. Rape, sexual slavery, 'forced marriage,' outrages upon personal dignity, enslavement and pillage as collective punishment

1378. The Prosecution has not adduced evidence to prove beyond reasonable doubt that AFRC/RUF rebels who committed the crimes of rape, sexual slavery, 'forced marriage,' outrages upon personal dignity, enslavement and pillage in Kono District did so with the specific intent of collectively punishing the victims for acts for which some or none of them may have been responsible. The Chamber therefore finds that these crimes did not constitute acts of collective punishment as charged in Count 2.

1379. The Chamber accordingly makes no finding under Count 2 in relation to these crimes.

6. Crimes in Kailahun District

6.1. Factual Findings on Crimes in Kailahun District

6.1.1. Background

1380. Kailahun District is located in the eastern province of Sierra Leone bordering Liberia to the east, Guinea to the north, Kono District to the north and Kenema District to the west. Its capital and largest city is Kailahun Town. Other towns in the District relevant to our findings include Buedu, Pendembu, Daru, Giema, Talia, Giehun, Baiwala, Manowa and Koindu.

[2540] *Supra* para. 1362.

1381. Due to its location and resources, Kailahun District was of central importance to the RUF throughout the conflict. Kailahun was the first District attacked by the RUF in March 1991 and became, along with Pujehun District, a corridor of logistics and resources between Liberia and Sierra Leone.[2541] Kailahun was also a major farming area, considered the "bread basket" of Sierra Leone, making it an important source of food for the RUF troops during the conflict.[2542]

1382. As of 1991 and throughout the conflict, the RUF operated military bases in Kailahun District. The Chamber heard evidence that prior to the Abidjan Peace Accord of 30 November 1996, RUF fighters staged attacks in Kailahun District in which civilians were killed, raped and abducted and houses burned.[2543] Captured civilians endured forced labour and forced military training, which included ideology training and training in the use of weapons and in mounting ambushes.[2544] After the signing of the Abidjan Peace Accord, the RUF briefly lost control over Kailahun Town to Government forces. The RUF thereafter regained control and maintained it until final disarmament in January 2002.[2545]

1383. From 1997 to 2000 the RUF was headquartered in Kailahun District, first at Giema and then at Buedu.[2546] An airfield and an armoury were constructed in Buedu, making it a key site for the reception and redistribution of materials and logistics, in particular arms and ammunition for the war.[2547] Important communications and decisions were made from Buedu, including appointments, promotions and assignments for missions.[2548]

1384. The RUF attempted to establish good relationships with the civilian population in order to maintain Kailahun as a defensive stronghold, ensure a steady flow of food supply to its

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[2541] Exhibit 174, Human Rights Watch, "Getting Away with Murder, Mutilation and Rape", p. 19375; Exhibit 181, NPWJ Conflict Mapping Report, pp. 24236, 24258; Transcript of 20 July 2006, TF1-371, p. 22 (CS); Transcript of 3 May 2007, Issa Sesay, p. 56.
[2542] Transcript of 3 June 2008, DAG-048, p. 115.
[2543] Transcript of 6 June 2008, DAG-080, pp. 9-10.
[2544] Transcript of 27 July 2005, TF1-036, pp. 21-22; Transcript of 4 October 2007, DIS-074, pp. 15-24, 60; Transcript of 5 October 2007, DIS-080, pp. 75-76.
[2545] Transcript, 23 October 2007, DIS-069, pp. 3-5; Transcript of 24 January 2008, DIS-157, pp. 43-44; Transcript of 25 January 2008, DIS-157, pp. 3-4.
[2546] Transcript of 21 January 2005, TF1-071, p. 14; Transcript of 26 July 2005, TF1-360, pp. 38-39 (CS); Transcript of 4 May 2007, Issa Sesay, p. 65; Transcript of 19 October 2007, DIS-069, p. 102; Transcript of 23 October 2007, DIS-069, pp. 83-84; Transcript of 3 June 2008, DAG-048, pp. 26-30, 120-122; Transcript of 6 June 2008, DAG-080, pp. 38-44.
[2547] Transcript of 29 October 2007, DIS-188, pp. 57-58 (CS); Transcript of 3 June 2008, DAG-048, pp. 103-104.

troops and preserve control over and the loyalty of the civilian population. The RUF opened schools in Kailahun and provided books and chalk. Parents agreed to gather food as their contribution for the free education.[2549] The RUF "government" in Kailahun provided free medical services to civilians and their children at a hospital in Giema.[2550] There was no apparent discrimination in the distribution of medical care and education to both civilians and fighters.[2551]

1385. Despite the fact that the RUF and some parts of the civilian population in Kailahun generally co-habited and may have been relatively integrated,[2552] the Chamber finds that the RUF continued to commit crimes against civilians in Kailahun District throughout the indictment period.

6.1.2. Killings in Kailahun District

1386. The Chamber heard evidence of numerous acts of beatings or killings in Kailahun District. While the Chamber has not always been able to determine the specific dates of each incident, we are satisfied, from the totality of the evidence, that the following acts took place between 14 February 1998 and 30 June 1998.[2553]

6.1.2.1. Killing of suspected Kamajors in Kailahun Town

1387. Following the ECOMOG Intervention on about 14 February 1998, there was widespread anxiety within the RUF leadership about possible Kamajor infiltrators among the civilian population.[2554] Bockarie, who was in Buedu, ordered that suspected Kamajors were to be arrested for investigation in Kailahun Town by Gbao, the RUF Overall Security Commander.[2555]

[2548] Transcript of 24 January 2008, DIS-157, pp. 92-93 (CS).
[2549] Transcript of 4 October 2007, DIS-047, pp. 45-52; Transcript of 2 June 2008, DAG-110, pp. 121-122; Transcript of 9 June 2008, DAG-080, pp. 20-21; Transcript of 9 June 2008, DAG-101, pp. 144-146.
[2550] Transcript of 4 October 2007, DIS-047, pp. 45-52, 69-70.
[2551] Exhibit 328, Defence Exhibit 173 showing the list of schools operating in Kailahun from September/October 1999; Transcript of 8 October 2007, DIS-077, pp. 62-63; Transcript of 13 March 2008, DIS-129, pp. 53-54.
[2552] Transcript of 6 June 2008, DAG-080, pp. 92-93.
[2553] Indictment, para. 48.
[2554] Transcript of 25 November 2005, TF1-045, p. 35, Transcript of 25 January 2008, DIS-157, p. 94.
[2555] Transcript of 8 November 2005, TF1-366, pp. 51-52; Transcript of 21 November 2005, TF1-045, pp. 40-41; Transcript of 1 June 2007, Issa Sesay, p. 8; Transcript of 24 January 2008, DIS-157, p. 83 (CS); Transcript of 25 January 2008, DIS-157, p. 92; Transcript of 3 June 2008, DAG-048, p. 77, Transcript of 5 June 2008, DAG-048, p. 18.

1388. As ordered by Bockarie, a group of MPs led by Kailahun District MP Commander John Aruna Duawo arrested 110 individuals suspected of being Kamajors.[2556] These suspected Kamajors were in fact displaced civilians retreating to Kailahun.[2557] The detainees, all men between the ages of approximately 18 and 60 years, were taken to the RUF MP office near the roundabout in Kailahun Town.[2558]

1389. The detainees were divided into two groups.[2559] The first group, comprising 45 men, had been arrested in the vicinity of Pendembu, while the second group, numbering 65 men, had been arrested in the vicinity of Kailahun Town.[2560] Amongst the second group was Charles Kayioko, an AFRC fighter who had come from Daru and was arrested by MP officials at Giema for not carrying an RUF travel pass.[2561]

1390. TF1-366 went to Kailahun Town after he was told that civilians suspected of being Kamajors had been detained there.[2562] Upon his arrival at the RUF MP office, TF1-366 met RUF officers including Gbao; Tom Sandy, the MP Commanding Officer; and Morie Fekai, the Overall G5 Commander.[2563]

1391. Tom Sandy investigated the first group, whom he declared not to be Kamajors. These

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[2556] Transcript of 31 March 2006, TF1-168, pp. 60-61; DIS-157 testified that John Aruna Duawo was the MP Commander in Kailahun Town. Transcript of 25 January 2008, DIS-157, p. 92. The Chamber accepts TF1-168's evidence that orders passed through a chain of command from the Chief of Defence Forces, Bockarie, to the Overall MP Commander, then to the District MP Commander to the other MPs. However, the Chamber does not accept TF1-168's evidence that Gbao was the Overall MP Commander, as we have found on the basis of other reliable evidence that Gbao was the Overall IDU Commander and Overall Security Commander at the time: *supra* paras 840-844.

[2557] Transcript of 1 June 2007, Issa Sesay, p. 21.

[2558] Transcript of 8 November 2005, TF1-366, p. 51 (CS); Transcript of 21 November 2005, TF1-045, p. 43; Transcript of 2 March 2006, TF1-113, p. 60; Transcript of 31 March 2006, TF1-168, pp. 58-59, 61 (CS); Transcript of 24 January 2008, DIS-157, p. 84 (CS). TF1-366 testified that the suspected Kamajors were detained at the "MP office", which had cells and was located near the roundabout in the centre of town. TF1-045 testified that they were detained at the "an old police station near the roundabout". TF1-113 states that they were detained at the "police station". As the witnesses have all described the location where the suspected Kamajors were detained similarly, and have identified it as close to the roundabout, the Chamber is satisfied that they have all identified the same location, and considers that the differences about the precise name of the building in which the Kamajors were detained are not material.

[2559] Transcript of 3 June 2008, DAG-048, pp. 78-79, Transcript of 3 March 2006, TF1-168, p. 59 (CS).

[2560] Transcript of 3 June 2008, DAG-048, pp. 78-79; Transcript of 24 January 2008, DIS-157, pp. 11, 84 (CS).

[2561] Transcript of 31 March 2006, TF1-168, pp. 58-72.

[2562] Transcript of 8 November 2005, TF1-366, p. 51 (CS).

[2563] Transcript of 8 November 2005, TF1-366, pp. 52-53 (CS); Transcript of 1 June 2008, Issa Sesay, p. 8.

[2563] Transcript of 21 November 2005, TF1-045, p. 43; Transcript of 14 March 2006, TF1-366, p. 40 (CS); Transcript of 5 June 2008, DAG-048, pp. 7-8.

men were then released by a JSBI panel chaired by Gbao.[2564] Bockarie was not informed about the release of this first group.[2565] The JSBI panel then commenced its investigation of the second group. In the course of the investigation, the men in the second group were released on parole.[2566] During the day, they were permitted some freedom of movement around Kailahun Town under the supervision of the MPs.[2567] At night, they were required to report back to the MP office, where they were confined.[2568]

1392. On 19 February 1998 Bockarie came to Kailahun from Buedu along with other senior officers including Alens Blamo, a.k.a. Lion.[2569] Bockarie, convinced that Kamajors were infiltrating Kailahun, was irate upon discovering that the first group of prisoners had been released.[2570] When he learned that the second group of prisoners had been released on parole, he ordered that they be re-arrested and killed.[2571] The Commanders who had taken the prisoners to work accordingly ordered that they be found and returned to the MP office.[2572]

1393. In the presence of senior officers including Gbao, John Aruna Duawo, Joe Fatoma, and Allieu Mendeglah, Bockarie ordered that ten of the alleged Kamajor prisoners be brought to him.[2573] A large crowd of over 100 AFRC/RUF fighters gathered at the roundabout near the clock tower in Kailahun Town.[2574] Bockarie then shot and killed three suspected Kamajors. The remaining seven suspected Kamajors were shot and killed by Bockarie's bodyguards.[2575] TF1-045, who was one of those bodyguards, testified to his participation in these shootings.[2576]

[2564] Transcript of 24 January 2008, DIS-157, p. 84 (CS); Transcript of 3 June 2008, DAG-048, p. 79. JSBI refers to the Joint Security Board of Investigations, which formed part of the security apparatus of the RUF: *supra* paras 701-703.
[2565] Transcript of 24 January 2008, DIS-157, p. 84 (CS).
[2566] Transcript of 8 November 2005, TF1-366, pp. 52-53 (CS); Transcript of 1 June 2008, Issa Sesay, p. 8; Transcript of 3 June 2008, DAG-048, pp. 77-82.
[2567] Transcript of 2 March 2006, TF1-113, p. 51; Transcript of 3 June 2008, DAG-048, p. 82.
[2568] Transcript of 3 June 2008, DAG-048, pp. 82-83.
[2569] Transcript of 31 March 2006, TF1-168, pp. 70-71; Transcript of 25 January 2008, DIS-157, p. 87.
[2570] Transcript of 25 January 2008, DIS-157, p 93 (CS).
[2571] Transcript of 24 January 2008, DIS-157, pp. 85-87 (CS); Transcript of 3 June 2008, DAG-048, p. 83.
[2572] Transcript of 31 March 2006, TF1-168, p. 60; Transcript of 3 June 2008, DAG-048, p. 83.
[2573] Transcript of 31 March 2006, TF1-168, p. 61; Transcript of 3 June 2008, DAG-048, p 86.
[2574] Transcript of 25 November 2005, TF1-045, pp. 41-43.
[2575] Transcript of 2 March 2006, TF1-113, pp. 56-58; Transcript of 25 November 2005, TF1-045, p. 40, Transcript of 24 January 2008, DIS-157, pp. 86-87; Transcript of 25 January 2008, DIS-157, pp. 97-98. DIS-177 also heard about the arrest of the suspected Kamajors and he saw people taken out and shot at the roundabout in Kailahun, Transcript of 4 October 2007, DIS-177, pp. 109-112; Transcript of 26 October 2007, DIS-188, pp. 96-98 (CS).
[2576] Transcript of 25 November 2005, TF1-045, pp. 42-46.

Gbao did not shoot anyone.[2577] DIS-157, a senior RUF Commander, witnessed the killing of the first ten people, which included his grandfather, but testified that he was not able to stop Bockarie from killing them as he would have been killed for interfering.[2578] From the MP office, the other prisoners could hear sporadic gun shots and everyone in the cells began to panic.[2579]

1394. After the killing of the first ten suspected Kamajors, Bockarie ordered John Aruna Duawo and Sam Kolleh to kill the remaining suspected Kamajors.[2580] John Aruna Duawo passed these orders to Joe Fatoma and Allieu Mendeglah.[2581] After issuing his order, Bockarie returned to Buedu.[2582]

1395. Later that same day, between 3pm and 5pm, the killings ordered by Bockarie were carried out by four MP Officers.[2583] The MPs led the suspects out in groups of four or five and shot them.[2584] Gbao was present when Bockarie gave the order and while it was carried out, but he did not directly participate in the killing.[2585]

1396. The only person from the second group of detainees that escaped the mass execution was the uncle of Commander Alpha Fatoma.[2586] Charles Kaiyoko, the AFRC fighter, was shot.[2587] TF1-113 testified that the remaining 63 detainees were civilians, including four of the witness' relatives.[2588] The bodies were abandoned where they had been killed, behind the MP

[2577] Transcript of 25 November 2005, TF1-045, p. 44.
[2578] Transcript of 24 January 2008, DIS-157, pp. 86, 90-100 (CS).
[2579] Transcript of 31 March 2006, TF1-168, pp. 58-72.
[2580] Transcript of 24 January 2008, DIS-157, pp. 83-88; Transcript of 3 June 2008, DAG-048, p. 89.
[2581] Transcript of 3 June 2008, DAG-048, p. 86. Sesay testified that John Aruna Duawo was the District MP Commander for Kailahun Town, Allieu Mendegla was an MP and Joe Fatoma was the Deputy MP Commander for Kailahun in 1998, *see* Transcript of 1 June 2008, Issa Sesay, pp. 8-9, 29-30; corroborated by DIS-158 who stated that John Aruna Duawo was the MP Commander in Kailahun Town, Transcript of 25 January 2008, DIS-157, p. 92.
[2582] Transcript of 2 March 2006, TF1-113, pp. 59-60, Transcript of 25 January 2008, DIS-157, pp. 98-100.
[2583] Transcript of 2 March 2006, TF1-113, pp. 61-62; Transcript of 31 March 2006, TF1-168, pp. 60-61.
[2584] Transcript of 31 March 2006, TF1-168, p. 59; Transcript of 2 March 2006, TF1-113, p. 63; Transcript of 25 January 2008, DIS-157, p. 97; corroborated by TF1-045 who stated that the soldiers removed the civilians in groups of five, took them out to the junction, and shot them, Transcript of 21 November 2005, TF1-045, pp. 43-45.
[2585] Transcript of 25 November 2005, TF1-045, p. 40; Transcript of 2 March 2006, TF1-113, p. 62; Transcript of 25 January 2008, DIS-157, p. 91.
[2586] Transcript of 31 March 2006, TF1-168, pp. 61-62, 66-67.
[2587] In his testimony, TF1-168 agreed that the information that led to the arrest of the alleged Kamajor suspects was provided by Charles Kaiyoko, an SLA/AFRC soldier who was intercepted in Giehun, Transcript of 3 April 2006, TF1-168, pp. 71-72.
[2588] Transcript of 2 March 2006, TF1-113, pp. 63-64.

office.[2589] The following day, civilians were ordered to dispose of the bodies.[2590]

1397. The alleged Kamajors were killed shortly before Johnny Paul Koroma and Sesay arrived in Kailahun in a convoy of 60 armed men.[2591] At the time of the killings, Sesay was situated between Makeni and Kono on his way to Kailahun.[2592] Kallon was not present in Kailahun.[2593]

6.1.2.2. Killing of Fonti Kanu in Pendembu

1398. Sometime in April 1998, Fonti Kanu, a senior AFRC fighter, was arrested by the RUF border security in Nyandehun Mambabu on allegations that he had been trying to escape to Liberia.[2594] He was taken to Tom Sandy, the MP Commander in Kailahun. Tom Sandy informed Bockarie of the arrest and Bockarie ordered that Fonti Kanu be detained. Fonti Kanu was subsequently released but ordered to remain in Kailahun Town.[2595]

1399. In June 1998, Fonti Kanu attempted to escape and was again caught by border guards in Bomaru and taken to the MP Commander in Baiwala.[2596] The MP Commander reported the matter to Bockarie in Buedu.[2597] DIS-157, TF1-371 and Galema went to collect Fonti Kanu from the Liberian border.[2598] Upon the orders of Bockarie, Fonti Kanu was killed in Pendembu because he was considered a security threat to the RUF.[2599] According to Sesay, execution was the standard punishment for those RUF who connived with the enemy.[2600]

6.1.2.3. Killing of Foday Kallon in Buedu

1400. In 1998, following the Intervention, the AFRC fighters based in Daru were pushed out by ECOMOG forces and fled to Monrovia, Liberia. Foday Kallon was the leader of these AFRC fighters and he was ordered by Sesay, Bockarie and Charles Taylor to mobilise the

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[2589] Transcript of 8 November 2005, TF1-366, pp. 50-62 (CS); Transcript of 2 March 2006, TF1-113, p. 63.
[2590] Transcript of 31 March 2006, TF1-168, p. 72.
[2591] Transcript of 3 April 2006, TF1-168, p. 13; Transcript of 10 May 2007, Issa Sesay, p. 11; Transcript of 1 June 2007, Issa Sesay, p. 8; Transcript of 5 October 2007, DIS-157, pp. 24-25, Transcript of 26 October 2007, DIS-188, p. 97 (CS); Transcript of 24 January 2008, DIS-157, pp. 83-88, 90 (CS).
[2592] Transcript of 1 June 2007, Issa Sesay, pp. 23. 26-27.
[2593] Transcript of 25 January 2008, DIS-157, pp. 27-28.
[2594] Transcript of 12 April 2005, TF1-141, pp. 66-74.
[2595] Transcript of 12 April 2005, TF1-141, pp. 66-74; Transcript of 16 May 2007, Issa Sesay, pp. 30-31.
[2596] Transcript of 16 May 2007, Issa Sesay, p. 26.
[2597] Transcript of 16 May 2007, Issa Sesay, pp. 30-31.
[2598] Transcript of 24 January 2008, DIS-157, pp. 97-102; Transcript of 14 February 2008, DIS-085, pp. 45-49, 118.
[2599] Transcript of 16 May 2007, Issa Sesay, pp. 30-31.
[2600] Transcript of 16 May 2007, Issa Sesay, p. 31.

fighters and return with them to Sierra Leone.[2601] About 300 fighters returned to Sierra Leone and were deployed to various areas while Foday Kallon remained at the RUF Headquarters at Buedu.[2602]

1401. Under the orders of Bockarie and Sesay, Foday Kallon travelled on two other occasions to Liberia to assemble the remaining fighters.[2603] On the third trip, Foday Kallon delayed his return and a dispute arose over the money he had been provided and his sharing of RUF information in Liberia. Upon his return to RUF Headquarters in Buedu, Foday Kallon was summarily executed.[2604] The Chamber notes that no credible evidence was tendered regarding the date of the execution of Foday Kallon.

1402. Subsequently, a radio message was sent to the front lines informing them of Foday Kallon's death and warning fighters against committing acts of betrayal or sabotage.[2605]

6.1.2.4. Killing of Dr. Kamara

1403. The person responsible for medical treatment and the distribution of medication in Buedu was a Dr. Kamara.[2606] He was accused of having sold medication that was intended for civilian use to a petty trader, a woman named Zainab, who in turn re-sold the medication.[2607] Such sale of medication was prohibited by the RUF.[2608]

1404. As a consequence of his actions, Dr. Kamara was killed in May 1999 at the MP station

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[2601] Transcript of 16 May 2007, Issa Sesay, p. 35; Transcript of 10 November 2005, TF1-366, pp. 46-49 (CS); Transcript of 15 November 2005, TF1-366, pp. 53-54 (CS).
[2602] Transcript of 10 November 2005, TF1-366, pp. 47-48 (CS); Transcript of 16 May 2007, Issa Sesay, p. 35.
[2603] Transcript of 10 November 2005, TF1-366, p. 48 (CS); Transcript of 16 May 2007, Issa Sesay, pp. 36-37.
[2604] The Chamber notes that TF1-366 and TF1-371 testified that the summary execution of Foday Kallon was carried out by Issa Sesay, while Issa Sesay, DIS-214 and DIS-085 testified that the execution was carried out by Sam Bockarie. In exercising caution, and considering the credibility of the cited Prosecution and Defence witnesses, particularly with regard to the acts of the Accused, the Chamber finds that there is reasonable doubt as to who personally committed the execution. *See* Transcript of 10 November 2005, TF1-366, pp. 48-49 (CS); Transcript of 15 November 2005, TF1-366, p. 53 (CS); Transcript of 28 July 2006, TF1-371, p. 113; Transcript of 16 May 2007, Issa Sesay, p. 37; Transcript of 15 January 2008, DIS-214, pp. 112-113 (CS); Transcript of 14 February 2008, DIS-085, pp. 37-38 (CS). See also Transcript of 12 February 2008, DIS-127, p. 46.
[2605] Transcript of 10 November 2005, TF1-366, pp. 48-49 (CS); Transcript of 15 November 2005, TF1-366, pp. 54-55 (CS); Transcript of 21 January 2008, DIS-174, pp. 117-118 (CS).
[2606] Transcript of 28 June 2007, DIS-301, p. 47.
[2607] Transcript of 16 May 2007, Issa Sesay, pp. 32-33; Transcript of 28 June 2007, DIS-301, p. 47.
[2608] Transcript of 16 May 2007, Issa Sesay, pp. 32-33.

in Buedu by a named RUF Commander on the instructions of Bockarie.[2609]

6.1.3. Sexual Violence in Kailahun District

1405. The Chamber heard evidence of numerous incidents of sexual violence in Kailahun District and notes that sexual violence was widespread both prior to and throughout the Indictment period. Although evidence of rapes and other forms of sexual violence committed by RUF fighters was adduced,[2610] the Chamber recalls that the Prosecution did not plead these crimes in respect of Kailahun District. Accordingly, the Chamber's findings on such acts are limited to their occurrence within the context of 'forced marriages' and sexual slavery.

6.1.3.1. 'Forced Marriage' of TF1-314

1406. In 1994, TF1-314 was abducted and twice raped by RUF fighters. The RUF fighter who raped her the second time took her as his "wife". From 1994 to 1998, TF1-314 was in Buedu as part of the Small Girl Unit ("SGU"). She cooked and did laundry for her rebel "husband" and lived in his house. She was also forced to have sexual intercourse with him at night.[2611]

1407. Other girls between 10 and 15 years of age were also taken as "wives" by rebels in Buedu. The girls cooked, did laundry and other domestic chores and at night had sex with their rebel "husbands". TF1-314 testified that she remained in Buedu because civilians who attempted to escape were liable to be killed or fall into the hands of Kamajors, who would kill anyone who came from a rebel zone.[2612]

6.1.3.2. 'Forced Marriage' of TF1-093

1408. In the rainy season of 1996, at the age of 15, TF1-093 was raped in Njala, Moyamba

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[2609] Transcript of 28 April 2005, Denis Koker, pp. 97-98; Transcript of 16 May 2007, Issa Sesay, pp. 32-33; Transcript of 28 June 2007, DIS-301, p. 47.

[2610] *See*, for example, Transcript of 29 November 2005, TF1-093, pp. 75, 77, 82, 85 (CS); Transcript of 21 November 2005, TF1-045, pp. 13, 55-56; Transcript of 24 November 2005, TF1-045, pp. 48-52.

[2611] Transcript of 2 November 2005, TF1-314, pp. 36-37, 40; Confidential Exhibit 46, Name of rebel Commander who raped the witness. While at Buedu, TF1-314, who was 10 years old at the time, was raped by one of CO Scorpion's men. She became pregnant as a result of that rape, but the baby died. Within the same year, she was raped a second time by another RUF combatant who was subordinate to Sesay, Transcript of 2 November 2005, TF1-314, p. 39.

[2612] Transcript of 2 November 2005, TF1-314, p. 43.

District, by two of Superman's bodyguards.[2613] While the rebels were fighting over her, one stabbed her foot and her 'private'. After the rape, Superman treated her wounds and 'offered' to marry her. TF1-093 accepted as she did not want to die.[2614] TF1-093 then moved with the RUF to Kailahun District.[2615] While travelling with the RUF, she observed the abductions of many other women who were forced to become the "wives" of Commanders.[2616] As Superman's wife, TF1-093 was forced to have sexual intercourse with him. She also cooked and did laundry for him.[2617] Superman habitually gave her drugs, including cannabis sativa, tablets and also gunpowder to eat.[2618]

6.1.3.3. 'Forced Marriages' of an unknown number of women

1409. The Chamber heard evidence from insider witnesses and witnesses who had been "bush wives" who testified to the widespread rebel practice of abducting women and forcing them to act as "wives" in Kailahun District. Many of the women interviewed by expert witness TF1-369, who authored Exhibit 138, the *Expert Report on Forced Marriages*, were school children and petty traders who were abducted from Koinadugu, Tonkolili, Pujehun, Kono, Bonthe, Bo, Freetown and Kenema and taken to Kailahun.[2619]

1410. The RUF routinely captured women during combat operations on villages in Kailahun District. Upon entering a village, the fighters moved from house to house, forcibly entering and removing the civilians. If the rebels were repelled by a counter-attack, the captured civilians were forced to retreat with them. Many of the abducted women were then assigned as "wives" to RUF Commanders.[2620] A senior RUF Commander explained the practice as follows:

[2613] Transcript of 29 November 2005, TF1-093, pp. 73-74 (CS). The Chamber notes that the rainy season in Kailahun District generally occurs from June to September: Transcript of 10 March 2006, TF1-108, p. 30 (CS).
[2614] Transcript of 29 November 2005, TF1-093, pp. 72-76 (CS).
[2615] Transcript of 29 November 2005, TF1-093, pp. 82-83 (CS).
[2616] Transcript of 29 November 2005, TF1-092, pp. 76-82(CS).
[2617] Transcript of 29 November 2005, TF1-093, pp. 72-77 (CS).
[2618] Transcript of 29 November 2005, TF1-093, p. 82 (CS).
[2619] Exhibit 138, Expert Report Forced Marriage, p. 12097. The Chamber notes that the Expert Witness also testified that numerous women were abducted who were not assigned as "wives" to rebels, but remained under the control of RUF fighters and were forced to engage in sexual intercourse with various rebels: Transcript of 27 July 2006, TF1-369, p. 60 (CS); Exhibit 138, Expert Report Forced Marriage, pp. 12097-12098.
[2620] Transcript of 21 July 2006, TF1-371, p. 67

> A Commander who hasn't a wife, somebody to take care of him domestically, take care of his domestic needs, go [sic] to a particular town on combat mission, and he is the head of that mission. He happens to conquer that particular territory, and abduct young girls that found it extremely difficult to escape with the opposing troop, and that Commander sees a young lady that he is interested in [...] The combatants, the other combatant are subjected to him. It is up to him, I mean at his discretion, to tell lady A, Fatmata, you are supposed to be with the CO, I mean, the commanding officer. The young lady has no – I mean, has no option, in terms of negotiating whether in fact he [sic] want or not. So that lady automatically become the wife of that Commander. [2621]

1411. Many Commanders including Bockarie had a captured 'wife'.[2622] Dennis Koker, the MP Adjutant in Kailahun District between 1998 and 1999, testified that it was regular practice for women to be forcibly taken as "wives" and some Commanders had five or six "wives."[2623]

1412. A woman's status as a married woman was no bar to abduction as married women were forced to leave their legitimate husbands and become 'bush wives' to the RUF rebels.[2624] The thousands of young women thus captured had no option but to submit to a 'husband' as they were in no position to negotiate their freedom.[2625] The abducted women could not escape for fear of being killed.[2626]

1413. A rebel "wife" was expected to carry out certain functions for her "husband" in return for his protection. These functions included carrying the rebel's possessions when he was deployed, engaging in sexual intercourse on demand, performing domestic chores and showing undying loyalty to the rebel in return for his 'protection'.[2627] If the women refused sexual intercourse with their "husbands," they were sent to the front line.[2628] Many "wives" bore

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[2621] Transcript of 21 July 2006, TF1-371, p. 67. The Chamber notes that the witness appears to be describing the practice of abducting women in Kailahun District prior to the Indictment period, as he notes that many of the women he observed in Kailahun District were 'wives' of the Commanders captured prior to the "merger with the AFRC": Transcript of 21 July 2006, TF1-371, p. 65. As the crime is of a continuous nature and the women to whom the witness refers remained with their "husbands" throughout the Indictment period, the Chamber considers this evidence of the circumstances in which they were captured to be relevant for the purpose of establishing the forced nature of their union.

[2622] Transcript of 21 July 2006, TF1-371, pp. 66-69 (CS).

[2623] Transcript of 28 April 2005, Denis Koker, p. 63.

[2624] Transcript of 29 November 2005, TF1-093, pp. 77-79; Transcript of 28 April 2005, Dennis Koker, pp. 63-64; Transcript of 21 July 2006, TF1-371, pp. 66 -67 (CS); Transcript of 5 October 2007, DIS-080, pp. 92-93; Transcript of 8 October 2007, DIS-080, pp. 10-11.

[2625] Transcript of 8 November 2005, TF1-366, pp. 71-71 (CS); Transcript of 21 July 2006, TF1-371, pp. 66 -68 (CS); Transcript of 29 July 2006, TF1-369, pp. 47-48 (CS).

[2626] Transcript of 2 November 2005, TF1-314, pp. 43-44.

[2627] Exhibit 138, Expert Report Forced Marriage, p. 12097.

[2628] Transcript of 8 November 2005, TF1-366, pp. 72-73 (CS).

children to their rebel "husbands."[2629]

6.1.4. Forced Labour in Kailahun District

6.1.4.1. Overview of Forced Labour

1414. The Chamber observes that the RUF used civilians as forced labour prior to 30 November 1996 and that this practice continued thereafter.[2630] RUF fighters captured civilians "for their own safety" at the war front and sent them to Giema and other locations.[2631] Captured civilians were placed in the custody of the G5 for screening.[2632] The purpose of the screening was to identify possible Kamajors, assess the health of the captives and then allocate them to different units, for combat training, forced farming or other forms of forced labour.[2633] Those who were not selected were handed over to chiefs[2634] by the G5 Commander.[2635]

1415. Following the May 1997 coup, civilians were captured at Nimikoro, Sewafe, Guinea, Kombayende and sent to Kailahun District to mine diamonds and cultivate farms. Bockarie gave orders for civilians to be abducted and taken to Kailahun District to work.[2636] Many of the civilians were forced to live in "zoo bushes", which were mining or farming communities guarded by RUF fighters for "protection."[2637]

1416. Consistent with the system of passes to control movement that applied in all RUF held areas, civilians were not free to move around Kailahun District but were required to obtain passes from the local MPs or G5 in order to search for food or to visit other towns.[2638] The pass system was a means of distinguishing civilians and fighters of opposing forces, but also a means of exercising control.[2639] Those who moved outside their town without a pass would be

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[2629] Transcript of 21 July 2006, TF1-371, p. 67.
[2630] Transcript of 2 March 2006, TF1-113, pp. 37-38 (CS); Transcript of 14 March 2006, TF1-330, pp. 24-31; Transcript of 7 March 2006, pp. 81-85 (CS).
[2631] Transcript of 26 June 2007, DIS-302, p. 105-107; Transcript 27 June 2007, DIS-302, pp. 22-26, p. 62.
[2632] Transcript of 5 October 2007, DIS-080, p. 87; Transcript of 8 October 2007, DIS-080, p. 9.
[2633] Transcript of 12 April 2005, TF1-141, p. 15; Transcript of 6 March 2006, TF1-113 pp. 32-35; Transcript 27 July 2005, TF1-036, pp. 41-42 (CS).
[2634] Transcript of 26 June 2007, DIS-302, pp. 105-107.
[2635] Transcript of 27 June 2007, DIS-302, pp. 22-26.
[2636] Transcript of 15 November 2005, TF1-366, pp. 59-60 (CS).
[2637] Transcript of 06 March 2006, TF1-113 pp. 32-35; Transcript of 23 June 2006, TF1-367, pp. 46-47.
[2638] Transcript of 6 March 2006, TF1-113, p. 25-30; Transcript of 8 March 2006, TF1-108, pp. 48-49; Transcript of 14 March 2006, TF1-330, pp. 68-81 (CS); Transcript of 23 June 2006, TF1367, pp. 30-31; Transcript of 27 June 2007, DIS-302, pp. 26-33.
[2639] Transcript of 6 March 2006, TF1-113, p. 25-30.

arrested, beaten or killed.[2640]

6.1.4.2. Forced farming

6.1.4.2.1. RUF "government" farms

1417. The RUF established "government" farms which were organised to support the fighters and civilians.[2641] The Army Agricultural Unit, which operated under the auspices of the G5, was responsible for organising civilians to farm for the RUF and managing their contributions.[2642] The G5 gave orders relating to civilians farming for the RUF administered farms and for the individual farms run by RUF Commanders.[2643] Approximately, 100 to 500 people from all over Kailahun District were forced to work in various RUF-controlled farms.[2644]

1418. The working conditions at the "government" farms for the civilians were difficult. Many of the civilians walked many miles from their homes to work on the farm, and walked back home in the evening. Their work consisted of brushing roads, weeding, cutting trees, cultivating crops and carrying the crops to trading posts or to the G5 Commanders for re-distribution.[2645] Although civilians had carried out these tasks prior to the conflict, under the RUF they were forced to take part in organised work expeditions in which they were ordered when, where and how to brush a particular road or town.[2646] During times of war, civilians were not allowed to have personal crops and civilian work was used exclusively for the war effort, and they worked without receiving any pay or food supply.[2647] Their exploitation led in

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[2640] Transcript of 2 March 2006, TF1-113, p. 46; Transcript of 8 March 2006, TF1-108, pp. 49; Transcript of 14 March 2006, TF1-330, pp. 68-81 (CS); Transcript of 27 June 2007, DIS-302, pp. 26-33.
[2641] Transcript of 3 June 2008, DAG-048, pp. 118-119; Transcript of 4 October 2007, DIS-047, p. 38.
[2642] Transcript of 21 November 2005, TF1-045, p. 64; Transcript of 6 March 2006, TF1-113, p. 32; Transcript of 13 March 2006, TF1-108, pp. 32-34; Transcript of 14 March 2006, TF1-330, p. 25 (CS); Transcript of 28 July 2006, TF1-371, p. 123.
[2643] Transcript of 21 November 2005, TF1-045, p. 63; Transcript of 6 March 2006, TF1-113, pp. 21-31; Transcript of 14 March 2006, TF1-330, p. 24 (CS); Transcript of 16 March 2006, TF1-330, pp. 67-68, 75-80 (CS); Transcript of 21 July 2006, TF1-371, pp. 60, 62-63 (CS).
[2644] Transcript of 28 April 2005, TF1-114, p. 61; Transcript of 14 March 2006, TF1-330, p. 25 (CS); Transcript of 15 March 2006, TF1-330, p. 53 (CS).
[2645] Transcript of 2 March 2006, TF1-113, p. 50; Transcript of 15 March 2006, TF1-330, pp. 14-24, 44-49 (CS). Numerous witnesses referred to the practice of "brushing roads" and the Chamber understands this to mean clearing bush roads or paths of vegetation or other debris in order to permit their use.
[2646] Transcript of 15 March 2006, TF1-330, pp. 31-39 (CS); Transcript of 16 March 2006, TF1-330, pp. 67-68, 75-80 (CS).
[2647] Transcript of 15 March 2006, TF1-330, pp. 44-49 (CS); Transcript of 16 March 2006, TF1-330, pp. 31-60, 100-107 (CS).

some cases to injuries, starvation and death.[2648]

1419. TF1-330 explained that refusing to farm was not an option for the civilians:

> [N]ow, I am free. Whatever I want to do for myself, I will do. But at that time, we wouldn't do anything by ourselves, apart from working for them. Except that one day they would just say "Work for us" [...] You wouldn't do it, they would beat you. They would continue beating you; if you are going to die, you die. No, you wouldn't deny doing it.[2649]

1420. Unlike the fighters, the workers were neither given a salary nor given anything to eat, often feeding themselves with bush yams, bananas or other wild crops they could scavenge.[2650] When not working at the RUF-controlled farms, civilians would be able to seek their own food, but would still require a pass allowing them to do so.[2651] If the civilians refused to farm, they would be beaten.[2652] From 1997 to 1999 some civilians in Talia were able to grow crops for their own sustenance, though this was limited and what was grown was often not enough. Such personal farming was allowed, however, at times of relative peace or once the subscription quota was met.[2653] Otherwise, the produce from the farms was given to the G5 who in turn handed it over to Gbao, who Gbao passed it on to Sesay.[2654]

1421. According to TF1-113 and TF1-367, in return for their work and produce, civilians received free medical treatment at RUF hospitals.[2655] TF1-330 and TF1-108 both contend that no such service was provided.[2656] The Chamber is of the view that, while it may have been the case that free medical services were provided to some part of the population of Kailahun District at various times during the armed conflict, the provision of such services cannot be exculpatory or excusatory for the forced labour and coercive conditions that the civilian population endured.

[2648] Transcript of 16 March 2006, TF1-330, p. 55 (CS); Transcript of 17 March 2006, TF1-330, pp. 10-19 (CS).
[2649] Transcript of 14 March 2006, TF1-330, p. 30 (CS).
[2650] Transcript of 28 April 2005, TF1-114, pp. 57, 61, 100 (CS); Transcript of 6 March 2006, TF1-113, pp. 32-38; Transcript of 13 March 2006, TF1-108, pp. 32-33; Transcript of 14 March 2006, TF1-330, p. 27 (CS); Transcript of 16 March 2006, TF1-330, p. 56 (CS).
[2651] Transcript of 14 March 2006, TF1-330, pp. 81-86 (CS).
[2652] Transcript of 21 November 2005, TF1-045, p. 64; Transcript of 14 March 2006, TF1-330, pp. 30-31 (CS); Transcript of 22 June 2006, TF1-367, p. 25-26 (CS).
[2653] Transcript of 15 March 2006, TF1-330, pp. 14-24 (CS).
[2654] Transcript of 14 March 2006, TF1-330, p. 25 (CS).
[2655] Transcript of 6 March 2006, TF1-113, p. 25-31; Transcript of 23 June 2006, TF1-367, pp. 40-42 (CS).
[2656] Transcript of 17 March 2006, TF1-330, pp. 19-22 (CS); Transcript of 10 March 2006, TF1-108, p. 64 (CS).

1422. From 1996 to 2001, farming occurred at RUF farms located in Giema, Talia, Sembehun, Bandajuma and Sandialu.[2657] In 1996 and 1998, there were two big "government" farms in Giema which were organised and managed by the RUF. Approximately 300 civilians were forced to work on these farms.[2658] The civilians could not refuse to farm because armed men were observing and supervising them while they were working.[2659]

1423. There was an RUF "government" farm located between Benduma and Buedu that operated after the end of the Junta period in February 1998.[2660] Civilians, including older men and women, were captured and forced to work on this farm.[2661] The civilians stayed in Benduma and between 5am and 6am they walked to the farm where they weeded, "brushed" and engaged in any other farm-related work that needed to be done.[2662] The civilians were guarded by armed fighters who ordered them to work.[2663] The fighters checked the rice on the farm and if any was missing the civilians were beaten.[2664] Rebels stayed at the farms for security reasons and to ensure that the work was done properly.[2665]

1424. Another such farm existed at Pendembu from December 1999 to 2001 and operated under the supervision of the Pendembu G5.[2666] Civilians were captured and brought from various areas in Kailahun District in order to work on the farm.[2667] Civilians who had been abducted from surrounding towns worked on this farm near Giehun.[2668] In the mornings, civilians were rounded up by the G5 Commander and they ordinarily were allowed to return home at the end of the day. However, in some cases the civilians spent whole days in the farm, at times up to a week, without being provided with food and accommodation.[2669] The food from these farms was designated exclusively for RUF Commanders.[2670]

[2657] Transcript of 14 March 2006, TF1-330, pp. 24-31 (CS).
[2658] Transcript of 7 March 2006, TF1-108, pp. 104-105.
[2659] Transcript of 7 March 2006, TF1-108, pp. 105-106.
[2660] Transcript of 12 April 2005, TF1-141, p. 16-18.
[2661] Transcript of 12 April 2005, TF1-141, pp. 16-19.
[2662] Transcript of 12 April 2005, TF1-141, p. 17.
[2663] Transcript of 12 April 2005, TF1-141, p. 16.
[2664] Transcript of 12 April 2005, TF1-141, p. 16.
[2665] Transcript of 12 April 2005, TF1-141, pp. 18-19.
[2666] Transcript of 2 March 2006, TF1-113, p. 70; Transcript of 6 March 2006, TF1-113, pp. 32-38; Transcript of 16 March 2006, TF1-330, pp. 44-45.
[2667] Transcript of 2 March 2006, TF1-113, p. 71.
[2668] Transcript of 6 March 2006, TF1-113, pp. 32-38.
[2669] Transcript of 2 March 2006, TF1-113, p. 71; Transcripts of 6 March 2006, TF1-113, pp. 36-37.
[2670] Transcript of 6 March 2006, TF1-113, pp. 32-38.

6.1.4.2.2. Farms of RUF Commanders

1425. In addition to farming for the RUF "government" farms, civilians were required to work on farms owned by RUF Commanders, including Sesay, Gbao and Bockarie, in each year from 1995 until 2000.[2671] These private farms were operated similarly to the RUF "government" farms, except that their produce was for the exclusive enjoyment of the particular proprietor of the farm. The civilians working on these farms were treated badly, forced to work at gun point and sometimes beaten.[2672]

1426. From 1996 to 2001, civilians cultivated a farm for Sesay in Giema, still known today as "Issa's Swamp" or "Issa Sesay Farm".[2673] The civilians built a barn on the farm, where they stored rice after they had harvested it.[2674] Civilians were also forced to work in Gbao's farm in Giema.[2675] Gbao had a bodyguard on his farm called Korpomeh who "guarded" the civilians who worked there.[2676]

6.1.4.2.3. Forced subscription of produce

1427. In the years 1996, 1997 and 2001, a subscription system functioned in Kailahun District.[2677] The system required civilians to obtain food for fighters, as well as deliver rice, cocoa, palm oil, coffee and meat to the G5.[2678] Civilians would 'subscribe' an amount of product indicated by the G5, meaning the civilians would obtain and surrender the produce to the G5 who would arrange for its redistribution or for trade.[2679] Each town that the RUF occupied was expected to 'contribute' a certain amount of farm produce to the RUF.[2680] Gbao instructed G5 Commander Morie Fekai on the farming products to demand from the civilians

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[2671] Transcript of 10 November 2005, TF1-366, pp. 6-7 (CS); Transcript of 7 March 2006, TF1-108, pp. 110-111; Transcript of 14 March 2006, TF1-330, p. 27 (CS); Transcript of 16 March 2006, TF1-330, pp. 45-46, 51-52; Transcript of 27 June 2007, DIS-302, pp. 6-9, 10-13. TF1-108 testified that Bockarie, Sesay, Kallon and Gbao had separate private farms in 1996, 1997, 1998 and 1999, but in 2000 the farms were combined. TF1-330 testified to personally working on Sesay's farm. The civilians worked on the farms in each year.

[2672] Transcript of 10 November 2005, TF1-366, p. 7 (CS); Transcript 7 March 2006, TF1-108, pp. 113-116; Transcript of 14 March 2006, TF1-330, pp. 30-31 (CS); DIS-178, Transcript of 19 October 2007, p. 7.

[2673] Transcript of 16 March 2006, TF1-330, pp. 52-54 (CS).

[2674] Transcript of 7 March 2006, TF1-108, p. 113; Transcript of 14 March 2006, TF1-330, pp. 28-29, 31 (CS).

[2675] Transcript of 7 March 2006, TF1-108, p. 113; Transcript of 14 March 2006, TF1-330, pp. 28-29 (CS).

[2676] Transcript of 7 March 2006, TF1-108, p. 113.

[2677] Transcript of 14 March 2006, TF1-330, pp. 41, 44 (CS).

[2678] Transcript of 7 March 2006, TF1-108, p. 94; Transcript of 14 March 2006, TF1-330, pp. 41-48 (CS).

[2679] Transcript of 10 March 2006, TF1-108, pp. 33, 42-43; Transcript of 14 March 2006, pp. 41-42 (CS); Transcript of 16 March 2006, TF1-330, p. 56 (CS); Transcript of 23 June 2006, TF1-367, pp. 36-39 (CS).

[2680] Transcript of 23 June 2006, TF1-367, pp. 34-38 (CS).

and these instructions were conveyed to civilians.[2681] The money from the trade of produce such as coffee, cocoa and palm oil would be used to buy ammunition.[2682]

1428. Villagers in all ten districts of Luawa Chiefdom, in Kailahun District, were forced to provide goods to the RUF.[2683] From 1997 to 1999 in Talia and various villages, up to 150 civilians would 'subscribe' to harvest and then deliver a total of about 300 bags of cocoa per year to the G5.[2684] The civilians would carry the cocoa to locations as ordered by the RUF, including to trading posts where the cocoa would be traded for rice, salt, Maggi or other items the rebels needed.[2685] Also in Talia, rebels gathered about 130 to 150 civilians to harvest palm oil and the civilians were required to deliver three or four drums of palm oil every year between 1997 and 1999 and in 2001.[2686] The women of Talia were forced to fish, and those who did not fish properly or catch any fish would be beaten.[2687] The fish caught by the women were handed to the RUF and taken to Gbao and other Commanders such as Martin George and Sam Koroma in Kailahun.[2688]

1429. From 1997 to 2000, civilians subscribed coffee to the RUF in Sandaru.[2689] The civilians handed their produce, harvest or subscription of cocoa, coffee and other goods to the G5 or S4 to be transmitted to Gbao.[2690] Between 100 and 200 civilians were forced to carry the subscribed goods on their heads from Ciema to Gbao in Kailahun Town.[2691]

6.1.4.2.4. Forced Labour for trading of produce

1430. From 1996 to 2000,[2692] the Guinea border was open for trading and civilians were

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[2681] Transcript of 10 March 2006, TF1-108, pp. 32; Transcript of 14 March 2006, TF1-330, pp. 41-42 (CS).
[2682] Transcript of 22 June 2006, TF1-367, p. 25 (CS).
[2683] Transcript of 10 March 2006, TF1-108, pp. 32-33.
[2684] Transcript of 10 March 2006, TF1-108, pp. 32-33; Transcript of 14 March 2006, TF1-330, pp. 42-48 (CS). Transcript of 15 March 2006, TF1-330, pp. 50-54 (CS).
[2685] Transcript of 14 March 2006, TF1-330, pp. 42-48 (CS).
[2686] Transcript of 10 March 2006, TF1-108, pp. 32-33; Transcript of 14 March 2006, TF1-330, pp. 42-48 (CS). Transcript of 17 March 2006, TF1-330, pp. 10-19 (CS).
[2687] Transcript of 14 March 2006, TF1-330, pp. 42-48 (CS).
[2688] Transcript of 14 March 2006, TF1-330, pp. 40-41 (CS).
[2689] Transcript of 14 March 2006, TF1-330, pp. 44-46 (CS); TF-330 was told by the Town Commander/Zo bush Commander that the civilians harvested coffee in Sandaru, Transcript of 14 March 2006, TF1-330, p. 46 (CS).
[2690] Transcript of 10 March 2006, TF1-108, pp. 27; Transcript of 13 March 2006, TF1-108, pp. 32-33; Transcript of 14 March 2006, TF1-330, pp. 42, 45.
[2691] Transcript of 10 March 2006, TF1-108, pp. 27.
[2692] Transcript of 14 March 2006, TF1-330, pp. 41-42 (CS).

forced to trade farm products such as cocoa, coffee and palm oil.[2693] Civilians were escorted to the trading sites by Commanders and fighters.[2694]

1431. From 1996 to 2001, civilians exchanged goods at waterside trading locations on the Guinean border.[2695] DAG-110 was in charge of five such trading sites in Telu,[2696] and other sites included Mende Buima, Baoma, Belu, Kamalu, and Koindu.[2697] Along the Moa River various trading sites from Manowa to Koindu were also established to trade with the Guineans.[2698] More trading sites opened after government troops withdrew from Kailahun District.[2699] The civilians carried the palm oil, cocoa and coffee to locations specified by the RUF or took it to trading places like the waterside to exchange it for items such as rice, salt, Maggi and sometimes clothes.[2700] The civilians were used as manpower to take products to the riverside, and the money they made from selling the goods had to be given to the RUF.[2701] During this period, Commanders escorted the civilians once a week to the trading sites.[2702] Approximately 500 civilians along with some fighters participated in trade.[2703] Civilians in Kailahun were also forced to carry logistical materials including ammunition across the Moa River to the front line areas in Kono District.[2704]

6.1.4.3. Forced mining

1432. The RUF engaged in diamond mining in Kailahun District as early as 1996 and until 2000.[2705] The mining activities were an important and vital source of income for the RUF, and later the AFRC/RUF Junta. The work in the mines was carried out by civilians who were forced to work under the supervision of AFRC/RUF fighters.[2706] Mining in Giema in 1998 was

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[2693] Transcript of 21 January 2008, DIS-174, pp. 73-74.
[2694] Transcript of 25 January 2008, DAG-110, pp. 31-32.
[2695] Transcript of 14 March 2006, TF1-330, pp. 41-42 (CS).
[2696] Transcript of 2 June 2008, DAG-110, pp. 42-45.
[2697] Transcript of 2 June 2008, DAG-110, pp. 42-44.
[2698] Transcript of 2 June 2008, DAG-110, pp. 42-44.
[2699] Transcript of 2 June 2008, DAG-110, pp. 42-44.
[2700] Transcript of 10 March 2006, TF1-108, pp. 32-33; Transcript of 14 March 2006, TF1-330, pp. 43 (CS); Transcript of 25 January 2008, DAG-110, pp. 31-32; Transcript of 2 June 2008, DAG-110, pp. 45-49.
[2701] Transcript of 23 June 2006, TF1-367, p. 40.
[2702] Transcript of 25 January 2008, DAG-110, pp. 31-32.
[2703] Transcript of 25 January 2008, DAG-110, pp. 31-32.
[2704] Transcript of 21 July 2006, TF1-371, p. 60 (CS).
[2705] Transcript of 10 November 2005, TF1-366, p. 9 (CS).
[2706] Transcript of 20 July 2006, TF1-371, pp. 34-37, 54 (CS).

overseen by Mr. Patrick, a civilian.[2707]

1433. In Giema, from 1998 to 1999, civilians were captured and forced to mine diamonds for Bockarie.[2708] Bockarie came from Buedu to Giema and took civilians along to mine.[2709] When TF1-330 went to Giema, he saw civilians mining diamonds on the route to Boabu.[2710] Forced mining for the RUF was also carried out in Yandawahun, in Mafindo (Mafindor), on the Guinea border, Nyandehun and in Jojoima in Malema Chiefdom.[2711] Other mining locations included, Yenga, Jabama and Golahun.[2712] Gbao and Patrick Bangura oversaw the civilians mining at Giema as well as "the soldiers who had guns".[2713] The civilians worked without food.[2714]

6.1.4.4. Forced military training

1434. The Chamber finds that it was the common practice of the RUF to capture and forcefully enlist civilians to increase their military capability. In Kailahun District many civilians, including children, were forced to undergo military training at the Bayama Training base and at the Bunumbu Training Base (Camp Lion).

6.1.4.4.1. Bayama Training Base – 1996-1997

1435. The RUF had a training base at Bayama, 23 miles from Kailahun from 1997 to 1998.[2715] There was an RUF "law" that stated that whoever went towards Bayama would be captured and taken to that base to be trained. Some recruits were as young as eight or nine years old, while others were older adults who were still fit to fight. The Commander was CO Jah Glory, and his deputy was Morris Kakwa.[2716] Eventually the training base was moved from Baiama to Bunumbu, which was closer to Giema.[2717]

[2707] Transcript of 25 January 2008, DIS-157, p. 85.
[2708] Transcript of 8 March 2006, TF1-108, p. 37; Transcript of 14 March 2006, TF1-330, pp. 48-49 (CS).
[2709] Transcript of 8 March 2006, TF1-108, p. 37; Transcript of 14 March 2006, TF1-330, pp. 48-49 (CS).
[2710] Transcript of 14 March 2006, TF1-330, pp. 48-50.
[2711] Transcript of 8 March 2006, TF1-108, pp. 38-40, Transcript of 14 March 2006, TF1-330, pp. 48-50 (CS).
[2712] Transcript of 10 November 2005, TF1-366, pp. 7-8 (CS).
[2713] Transcript of 14 March 2006, TF1-330, pp. 48-50 (CS).
[2714] Transcript of 14 March 2006, TF1-330, pp. 49 (CS).
[2715] Transcript of 14 March 2006, TF1-330, p. 51 (CS).
[2716] Transcript of 8 March 2006, TF1-108, pp. 41-44.
[2717] Transcript of 8 March 2006, TF1-108, p. 41; Transcript of 14 March 2006, TF1-330, p. 51 (CS).

6.1.4.4.2. Bunumbu Training Base (Camp Lion) - 1998

1436. In 1998, at the instructions of Bockarie, Camp Lion was established at Bunumbu four miles from Kailahun Town.[2718] There was an overall training Commander at Bunumbu.[2719]

1437. People who were captured on the highway to Freetown from 1997 onwards,[2720] as well as people from Daru and the SLA, were trained at Bunumbu training base.[2721] These civilians and people from the SLA were brought to TF1-362 at Bunumbu training base at the command of General Issa Sesay.[2722] In addition, captured women who were not taken as wives of Commanders were often sent to the training base at Bunumbu to train as fighters.[2723]

1438. In February 1998, civilians were taken to the G5 office for screening in Kailahun District. Also, people were captured from Talia by other RUF trainees and their masters, and taken to the base at Bunumbu as recruits. Boys as young as eight years[2724] and girls as young as six years[2725] old were trained to fight at Bunumbu.[2726] At Bunumbu there was a Small Boys' Unit and a Women's Auxiliary Corps ("WAC") for girls where children were trained to become the bodyguards of senior Commanders.[2727] Dennis Koker saw Morris Kallon bring people to be trained by the RUF.[2728] In all, about 500 people were sent to train at Bunumbu during the three years the witness was there and the witness estimated that "45 percent" of those taken there were under the age of 15.[2729]

1439. TF1-263 attended training at Camp Lion, where he received training for two months from the training Commander.[2730] The trainees were split into four platoons of 15 people each.[2731] TF1-263 and ten other 14-year-olds were in one platoon.[2732] They learned how to run

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[2718] Transcript of 29 October 2007, DIS-188, p. 48.
[2719] Confidential Exhibit 45, Name of Training Commander; Transcript of 6 April 2005, TF1-263, p. 34.
[2720] Transcript 20 April 2005, TF1-362, p. 32.
[2721] Transcript 20 April 2005, TF1-362, p. 43.
[2722] Transcript 20 April 2005, TF1-362, p. 43.
[2723] Transcript of 28 April 2005, Dennis Koker, p. 63; Transcript of 8 November 2005, TF1-366 (CS), p. 72; Transcript of 9 March 2006, TF1-108, pp. 4-6 (CS).
[2724] Transcript of 31 March 2006, TF1-168, p. 76 (CS); Transcript of 14 March 2006, TF1-330, p. 51 (CS).
[2725] Transcript of 8 March 2006, TF1-108, pp. 46-47; Transcript of 14 March 2006, TF1-330, p. 51 (CS).
[2726] Transcript of 8 March 2006, TF1-108, p. 43.
[2727] Transcript of 2 March 2006, TF1-113, pp. 54-64; Transcript of 31 March 2006, TF1-168, pp. 75-76 (CS).
[2728] Transcript of 28 April 2005, TF1-114, p. 66.
[2729] Transcript of 28 April 2005, TF1-114, p. 67.
[2730] Transcript of 6 April 2005, TF1-263, p. 34.
[2731] Transcript of 6 April 2005, TF1-263, pp. 34-35.
[2732] Transcript of 6 April 2005, TF1-263, pp. 34-35.

in formation, attack towns, burn houses, fight, fire AK-47s, rocket propelled grenades and double-barrelled guns.[2733]

1440. TF1-141 was taken to the Camp Lion training base with other small boys, some bigger boys and some girls and young women. There were some AFRC/RUF rebels with them so that no one could escape. People were forced to come to the camp from places like Koidu and Kono.[2734] The rebels said "You have to go to the training base because you have to be soldiers yourselves."[2735] Michael Loleh was TF1-141's practical training instructor.[2736] A lot of recruits that TF1-141 trained with died during training – either from beatings, being shot or from falling off of a "monkey bridge" and onto barbed wire.[2737] During training, TF1-141 was in the Ranger Squad with all other SBUs.[2738]

1441. CO Vandi, CO Denis, and Sesay all visited Camp Lion.[2739] On one visit by Sesay, he told the recruits that he had security at the camp, and that he had sent "his boys" to the training base as well, and that if a recruit left the base, made any mistake or failed to do as they were told, he would execute the offender.[2740]

1442. TF1-362 testified that Sesay was based in Buedu with Bockarie while TF1-362 was in Bunumbu.[2741] During 1998, in Bunumbu, Sesay punished the training Commander by having that Commander flogged and detained on allegations of mistreatment of a woman, which proved to be false. Sesay imposed this punishment because the procedure for serious cases had not been complied with. Another order from High Command should have been sought before imposing punishment.

6.1.4.5. Other forms of Forced Labour in Kailahun District

1443. Civilians in Kailahun were extensively engaged to perform RUF "government" jobs that the fighters could not do because they were engaged in combat activities, such as the

[2733] Transcript 6 April 2005, TF1-263, pp. 35-38
[2734] Transcript of 12 April 2005, TF1-141, pp. 22, 27.
[2735] Transcript of 12 April 2005, TF1-141, p. 23.
[2736] Transcript of 12 April 2005, TF1-141, p. 23.
[2737] Transcript of 12 April 2005, TF1-141, pp. 25-26.
[2738] Transcript of 12 April 2005, TF1-141, p. 35.
[2739] Transcript of 12 April 2005, TF1-141, p. 30.
[2740] Transcript of 12 April 2005, TF1-141, p. 30-32.
[2741] Transcript of 22 April 2005, TF1-362, pp. 2-5.

construction of bridges and an air strip in Buedu.[2742] In 1996, from Ivory Coast, Sankoh gave instructions for the construction of an airfield in Buedu.[2743] Bockarie discussed it with RUF Commanders and with chiefdom Commanders and then brought machinery for the construction and both civilians and fighters worked on its construction.[2744] During the construction of the airstrip, MPs and armed RUF fighters were present, providing security for the workers because the airfield was very close to the Liberian border.[2745] Sesay was present at the proposed airstrip field in a small green Suzuki jeep and he told Denis Koker that "we should make people work here."[2746]

6.2. Legal Findings on Crimes in Kailahun District

1444. The Indictment charges the Accused in Kailahun District with Unlawful Killings (Counts 3 to 5) between about 14 February 1998 and 30 June 1998 and with Sexual Violence (Counts 6 to 9) and Enslavement (Count 13) "[at] all times relevant to the Indictment."[2747] The Accused are also charged with Acts of Terrorism (Count 1) and Collective Punishments (Count 2).

1445. The Chamber is satisfied that each of the following acts was committed intentionally by the perpetrators. The Chamber also recalls its finding that the Prosecution has proved beyond reasonable doubt that an armed conflict and a widespread or systematic attack against the civilian population of Sierra Leone.[2748] Unless otherwise stated below, the Chamber finds that the perpetrators' acts formed part of the widespread or systematic attack against the civilian population, and that the perpetrators were aware of this. In addition, unless otherwise stated, the Chamber is satisfied that a nexus existed between these acts and the armed conflict and that the perpetrators knew that the victims were not taking a direct part in hostilities.

6.2.1. Unlawful Killings (Counts 3 to 5)

1446. The Prosecution alleges that "between about 14 February 1998 and 30 June 1998, in

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[2742] Transcript of 21 July 2006, TF1-371, p. 60 (CS).
[2743] Transcript of 29 October 2007, DIS-188, p. 57 (CS).
[2744] Transcript of 18 October 2007, DIS-178, p. 80; Transcript of 29 October 2007, DIS-188, pp. 56-57 (CS); Transcript of 9 of November 2007, DIS-188, pp. 70-71; Transcript of 5 June 2008, DAG-048, pp. 23-24.
[2745] Transcript of 5 June 2008, DAG-048, pp. 23-24.
[2746] Transcript of 28 April 2005, Dennis Koker, p. 61.
[2747] Indictment, para. 58.

locations including Kailahun town, members of AFRC/RUF unlawfully killed an unknown number of civilians."[2749]

6.2.1.1. Killing of 63 suspected Kamajors and one AFRC fighter hors de combat

1447. The Chamber recalls that 63 civilians accused of being Kamajors and one AFRC fighter *hors de combat* were killed on 19 February 1998 in Kailahun Town by Bockarie and members of the RUF acting on his orders.[2750]

1448. The Chamber is satisfied that the perpetrators had reason to know that the persons targeted were civilians. The Chamber finds that there was no reasonable basis to believe that the victims were in fact Kamajors and recalls in this regard that the first group of detainees had been investigated and released.[2751] We note that throughout the Junta regime, civilians falsely accused of being Kamajors or of supporting Kamajors had been targeted by the AFRC/RUF forces.[2752] The Chamber finds that the killing of these civilians formed part of the widespread or systematic attack directed against the civilian population of Sierra Leone at the time and that the perpetrators had reason to know that their acts formed part of the attack. The Chamber therefore finds that these killings constitute murder as a crime against humanity, as charged in Count 4 of the Indictment.

1449. The Chamber further finds that the killing of these 64 persons occurred on a massive scale and that the intention to kill on a massive scale is evident from the systematic manner in which the civilians were escorted from confinement and killed in consecutive groups.[2753] The Chamber is thus satisfied that these killings constitute extermination as charged in Count 3 of the Indictment.

1450. We find that the 63 civilians killed had been detained prior to their execution and were not taking an active part in hostilities at the time of their death. We conclude that a nexus existed between the killings and the armed conflict, as Bockarie ordered the killings in retaliation to the Intervention and due to his anxiety that Kamajors had infiltrated the civilian

[2748] *Supra* paras 962-963.
[2749] Indictment, para. 49.
[2750] *Supra* paras 1387-1397.
[2751] *Supra* para. 1391.
[2752] *Supra* paras 1045-1087.

population. Consequently, the Chamber finds that these killings constitute the war crime of murder, as charged under Count 5 of the Indictment.

1451. However, we recall that Kayioko an *hors de combat* member of the AFRC, who fought alongside the RUF in the armed conflict. The Chamber is of the opinion that the law of armed conflict does not protect members of armed groups from acts of violence directed against them by their own forces.

1452. The law of international armed conflict regulates the conduct of combatants *vis-à-vis* their adversaries and persons *hors de combat* who do not belong to any of the armed groups participating in the hostilities. In this respect, we recall that the field of application of the Third Geneva Convention is restricted to persons "who have fallen into the power of the enemy."[2754]

1453. It is trite law that an armed group cannot hold its own members as prisoners of war. The law of international armed conflict was never intended to criminalise acts of violence committed by one member of an armed group against another, such conduct remaining first and foremost the province of the criminal law of the State of the armed group concerned and human rights law. In our view, a different approach would constitute an inappropriate re-conceptualisation of a fundamental principle of international humanitarian law. We are not prepared to embark on such an exercise.

1454. We therefore find that the killing of Kayioko does not constitute the war crime of violence to life, as charged in Count 5 of the Indictment.

6.2.1.2. Killing of Fonti Kanu

1455. The Chamber recalls that Fonti Kanu was killed sometime in June 1998 by RUF fighters acting on the orders of Bockarie.[2755] The Chamber is satisfied that Kanu was *hors de combat* at the time of his death. However, we reiterate that the killing of a member of an armed

[2753] *Supra* para. 1395.

[2754] *See* definition of prisoners of war in Article 4 of the Third Geneva Convention. Similarly, we note that the definition of protected persons for the purpose of the Fourth Geneva Convention is limited to persons who find themselves "in the hands of a Party to the conflict or Occupying Power of which they are not nationals": Fourth Geneva Convention, Article 4.

[2755] *Supra* paras 1398-1399.

group by another member of the same group does not constitute a war crime. We are further of the opinion that the killing did not form part of the widespread or systematic attack on the civilian population of Sierra Leone. The Chamber finds that this killing does not constitute murder as charged in Counts 4 or 5 of the Indictment.

6.2.1.3. The Killing of Foday Kallon

1456. The Chamber has found that Foday Kallon, an AFRC fighter, was killed in Buedu.[2756] The Chamber is not satisfied that the date when the killing took place has been established to be within the timeframe for unlawful killings charged in Kailahun District. As such, the Chamber finds that no liability can be attributed to the Accused for this incident.

1457. Furthermore, we observe that as Foday Kallon was not a member of the opposing armed forces opposing the RUF, his killing does not constitute a war crime.[2757] We also find that this killing was isolated from the widespread or systematic attack against the civilian population of Sierra Leone and so the general requirements of Count 4 have not been established in respect of this incident.

6.2.1.4. The Killing of Dr. Kamara

1458. The Chamber recalls that in May 1999 Doctor Kamara was killed in Buedu by a named RUF Commander following Bockarie's instructions.[2758] As this killing was committed outside of the Indictment period for unlawful killings in Kailahun District, the Chamber finds that no liability can be attributed to the Accused for this incident.

6.2.2. Sexual Violence (Counts 6 to 9)

1459. The Prosecution alleges that "at all times relevant to the Indictment, an unknown number of women and girls in various locations in [Kailahun] District were subjected to sexual violence," including the capture of victims and their use as sex slaves and/or their entry into 'forced marriages.'[2759] We consider that "at all times relevant to [the] Indictment" means from

[2756] *Supra* paras 1400-1401.
[2757] *Supra* paras 1451-1453.
[2758] *Supra* paras 1403-1404.
[2759] Indictment, para. 58.

30 November 1996[2760] to about 15 September 2000.[2761] The Chamber heard credible evidence of rapes which occurred during the pleaded time frame; however, rape was not particularised as a crime charged in the Indictment in for Kailahun District.[2762] We therefore decline to consider whether the crime of rape has been proved in Kailahun District.

6.2.2.1. Sexual Slavery and 'Forced Marriage' of TF1-314

1460. The Chamber recalls TF1-314's testimony that she was abducted from Masingbi in Tonkolili District at age 10 and taken to Buedu in Kailahun District where she lived from 1994 to 1998.[2763] The Chamber concludes from her evidence that she was raped twice before being "married" to a rebel Commander in Buedu. As the Commander's "wife" TF1-314 was forced to engage in domestic chores and to have sexual intercourse with him. The Chamber is satisfied that TF1-314 remained as the "wife" of the Commander as she feared that, if she were to escape, she could be captured and fall into the hands of Kamajors who would kill her because she came from a rebel zone. The Chamber finds that TF1-314 did not consent to her "marriage" and that, moreover, genuine consent was not possible in such coercive circumstances.

1461. Based upon the foregoing, the Chamber is satisfied that the Commander intended to exercise powers attaching to the right of ownership over TF1-314 and that he deliberately forced her into a conjugal partnership. The Chamber thus finds that the elements of sexual slavery and the other inhumane act of 'forced marriage' have been established, as charged under Counts 7 and 8 of the Indictment.

6.2.2.2. Sexual Slavery and 'Forced Marriage' of TF1-093

1462. The Chamber recalls that during the rainy season of 1996, TF1-093 was raped by Superman's bodyguards in Moyamba District.[2764] As this rape was committed outside of the temporal jurisdiction of the Special Court and in a District not pleaded in the Indictment for sexual violence, the Accused are not charged for this act committed in Moyamba District.

[2760] Indictment, para. 16.
[2761] Indictment, para. 83.
[2762] Indictment, para. 58. *See supra* paras 412-419.
[2763] *Supra* para. 1406.
[2764] *Supra* para. 1408.

1463. The Chamber concludes that TF1-093 was taken after the rainy season of 1996 to Kailahun District where she was forced into an exclusive conjugal relationship with Superman and was forced to become his 'wife'. The Chamber is satisfied that TF1-093 was incapable of giving her genuine consent and became Superman's 'wife' because she feared she would have been killed. As Superman's wife, she cooked and did laundry for him and had sex with him, all of which caused her to endure physical and mental suffering. The Chamber further finds that Superman exercised the rights of ownership over TF1-093 by virtue of this exclusive conjugal relationship with the victim. The Chamber also finds that Superman gave drugs to TF1-093 which reflects his intention to further abuse and exercise control over her.

1464. Based upon the foregoing, the Chamber finds that the elements of sexual slavery and of 'forced marriage' as an other inhumane act have been established beyond reasonable doubt. We therefore find that the 'forced marriage' of TF1-093 constitutes sexual slavery and an other inhumane act, as charged under Counts 7 and 8 of the Indictment.

6.2.2.3. Sexual Slavery and 'Forced Marriages' of other civilians

1465. The Chamber has found that RUF rebels forcefully captured and abducted an unknown number of women and girls from locations throughout Sierra Leone and took them to Kailahun District. The Chamber concludes that it was common practice for rebels to keep captured women subject to their control as sex slaves and to force conjugal relationships on women who unwillingly became their 'wives.'[2765]

1466. The Chamber finds that acts of sexual violence were intentionally committed against women and girls in the context of a hostile and coercive war environment in which genuine consent was not possible. The Chamber also finds that when the rebels forcefully took victims as 'wives' they intended to deprive them of their liberty. The Chamber finds that the use of the term 'wife' by the rebels was deliberate and strategic, with the aim of enslaving and psychologically manipulating the women and with the purpose of treating them like possessions.

1467. The Chamber is satisfied that many fighters had 'bush wives', who, similarly to the cases of TF1-314 and TF1-093 discussed above, were intentionally forced to have sex with the

rebels. The Chamber also finds that the perpetrators intended to exercise control and ownership over their victims who were unable to leave or escape for fear that they would be killed or sent to the front lines as combatants. Accordingly, the Chamber finds that young girls and women were intentionally forced into conjugal relationships with rebels.

1468. We also find that many women were forced into marriage by means of threats, intimidation, manipulation and other forms of duress which were predicated on the victims' fear and their desperate situation.

1469. In relation to the sexual offences alleged in the Indictment, the Chamber notes that the Accused have canvassed the defence of consent and contend that the women and girls who they captured and abducted during attacks, and who were victims of those offences, willingly consented to the alleged marriages and sexual relationships. The Defence also contends that the marriages which were so contracted were conducted with the requisite consent of the parties involved. The Chamber observes, however, that parental and family consent to the so-called marriages of these sexually enslaved and abused women was conspicuously absent.

1470. In light of the foregoing and given the violent, hostile and coercive environment in which these women suddenly found themselves, the Chamber first of all considers that the sexual relations with the rebels, notwithstanding the contention of the Defence to the contrary, and on the basis of very credible and compelling evidence, could not, and was, in circumstances, not consensual because of the state of uncertainty and subjugation in which they lived in captivity.

1471. In this regard, the Chamber is of the opinion and so holds, that in hostile and coercive circumstances of this nature, there should be a presumption of absence of genuine consent to having sexual relations or contracting marriages with the said RUF fighters.

1472. The Chamber is satisfied that 'bush wives' were not only forced into exclusive conjugal sexual relationships but were also expected to perform domestic chores and to bear children.

1473. The Chamber is therefore satisfied that all the elements of sexual slavery and of 'forced marriage' as an other inhumane act have been established. We conclude that an unknown

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[2765] *Supra* paras 1405-1413.

number of women were subjected to sexual slavery and 'forced marriages' in Kailahun District, as charged under Counts 7 and 8 of the Indictment.

6.2.2.4. Outrages against personal dignity (Count 9)

1474. The Chamber is satisfied that the acts of sexual violence in respect of which findings were made under Counts 6 to 8 resulted in the humiliation, degradation and violation of the dignity of the victims.[2766] The Chamber is satisfied that the victims of sexual slavery and 'forced marriage' endured particularly prolonged physical and mental suffering as they were subjected to continued sexual acts while living with their captors under difficult and coercive circumstances. Due to the social stigma attached to them by virtue of their former status as 'bush wives' and the effects of the prolonged forced conjugal relationships to which they were subjected, these women and girls were too ashamed or too afraid to return to their communities after the conflict. Accordingly, many victims were displaced from their home towns and support networks.[2767]

1475. The Chamber finds that these violations were serious and that the perpetrators were aware of their degrading effect. We accordingly find that TF1-093, TF1-314 and an unknown number of other women were subjected to outrages upon their personal dignity in Kailahun District, as charged in Count 9 of the Indictment.

6.2.3. Abductions and Forced Labour (Count 13)

1476. The Prosecution alleges that "[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."[2768] The Prosecution defines 'forced labour' to include "domestic labour and use as diamond miners."[2769]

1477. In light of the wording of the Indictment, we consider that "at all times relevant to [the] Indictment" means from 30 November 1996[2770] to about 15 September 2000.[2771] As set out

[2766] *Supra* paras 1459-1473.
[2767] Exhibit 138, Expert Report Forced Marriage, p. 12097-98.
[2768] Indictment, para. 74.
[2769] Indictment, para. 69. The Chamber recalls that the examples of forced labour enumerated above are non-exhaustive, and that "not all labour by civilians during an armed conflict is prohibited – the prohibition is only against forced or involuntary labour."
[2770] Indictment, para. 16.

above in the Factual Findings for Kailahun District, the Chamber found that the acts described in the following paragraphs have been committed and are relevant for the determination of Legal Findings for Count 13 of the Indictment.[2772]

6.2.3.1. Forced farming

1478. The Chamber is satisfied that after abducting civilians from various locations in Sierra Leone, members of the RUF took them to Kailahun District with the intent to use them for forced labour which included farming, carrying of loads to and from locations, diamond mining, fishing, hunting, domestic labour and military training.[2773]

1479. The Chamber finds that as of 30 November 1996 and to at least September 2000 the RUF had a planned and organised system in which civilians were intentionally forced to engage in various forms of forced farming throughout Kailahun District. This system operated in such a way that once civilians were abducted and brought to Kailahun District, they were screened by the G5 unit and organised by the Agricultural unit to work on the "government" farms established by the RUF. The Chamber is satisfied that in 1996 and 1998, two large "government" farms operated in Giema on which approximately 300 civilians were forced to work; that after the Junta period (February 1998) civilians were forced to work on a RUF "government" farms located in Benduma and Buedu; that, from 1998 to 1999, more civilians were abducted from various locations and forced to work on farms that were located in a forest called Togbabeni near Pendembu; that from 1997 to 2000 many women were intentionally forced by the G5 to engage in fishing and hunting in Talia;[2774] and that, from December 1999 to 2001, the RUF operated a farm in Pendembu under the supervision of the local G5. The Chamber also finds that the produce from the farms was taken by the G5 or S4 unit and handed to Gbao and other senior RUF officials, or taken as part of a forced subscription system, or simply confiscated from the civilians.

1480. The Chamber finds that the perpetrators intentionally exercised power over the civilians who were guarded and supervised by armed men. The civilians were deprived of their

[2771] Indictment, para. 83.
[2772] *Supra* paras 1414-1443.
[2773] *Supra* paras 1414-1426.
[2774] *Supra* para. 1428.

liberty, as evinced by the use of the 'pass' system, and held under coercion and threat. Further, the Chamber finds that the civilians at these farms worked under oppressive conditions – they were treated as slaves, forced to work without compensation or food, and, in the event that civilians refused to work, they were beaten or their property was confiscated. The Chamber also finds that from 1996 onwards, including the period covered by the Court's temporal jurisdiction, senior RUF officials including Gbao, Sesay and Bockarie also owned farms on which civilians were forced to work at gunpoint.

1481. The Chamber is of the view, in light of the above findings, that the Defence position that people volunteered to work at these farms, did so happily and were fed when they worked is untenable in the circumstances that we have found existed.

1482. The Chamber is therefore satisfied that at the relevant times, namely from 30 November 1996 to about 15 September 2000, civilians were forced to work at farms situated in various locations around Kailahun District. The Chamber concludes that those civilians were equally deprived of their liberty and were forced to work against their will. Consequently, the Chamber finds with respect to forced farming crimesof enslavement, a crime against humanity, as charged in Count 13.

6.2.3.2. Enslavement of civilians to carry loads

1483. The Chamber finds that at the relevant times, namely from 30 November 1996 to about 15 September 2000, civilians under escort of RUF fighters were intentionally forced to carry loads such as palm oil, cocoa, coffee to and from different trading sites in Kailahun District.[2775] Similarly, civilians were forced to carry their produce, harvest or subscription to specified destinations, without compensation or payment. The Chamber is also satisfied that during that period of time the RUF intentionally forced civilians in Kailahun District to carry logistical materials, including ammunition, from Kailahun to Pendembu, a stretch of 17 miles, and across the Moa River to the front lines in Kono. The Chamber finds that the physical movement of the civilians was controlled, that the use of violence and the threat of violence by armed RUF fighters monitoring their labour amounts to a deprivation of liberty.

1484. The Chamber is therefore satisfied that at the relevant times, from 30 November 1996

to about 15 September 2000, civilians were forced to work and carry loads to and from different areas of Kailahun District. The Chamber concludes that those civilians were equally deprived of their liberty and were forced to work against their will. Consequently, the Chamber finds with respect to the forceful use of civilians to carry loads that all the elements of enslavement, a crime against humanity, have been established for Kailahun District as charged in Count 13 of the Indictment.

6.2.3.3. Civilians forced to mine for diamonds

1485. The Chamber finds that as of 30 November 1996 and to about 15 September 2000, the AFRC/RUF forced civilians to engage in diamond mining under the armed supervision of their fighters in various locations in Kailahun District.[2776] The Chamber recalls its finding that the mining and trading of diamonds was a vital source of revenue for the AFRC/RUF.[2777] The Chamber finds that the physical movement of the civilians was controlled, that the use of violence and the threat of violence by the RUF fighters monitoring their mining for diamonds amounts to a deprivation of liberty.

1486. The Chamber is therefore satisfied that at the relevant times, namely from 30 November 1996 to about 15 September 2000, civilians were forced to mine for diamonds in different areas of Kailahun District. The Chamber concludes that those civilians were equally deprived of their liberty and were forced to work against their will. Consequently, the Chamber finds with respect to the forceful use of civilians to mine for diamonds that all the elements of enslavement, a crime against humanity, have been established for Kailahun District as charged in Count 13 of the Indictment.

6.2.3.4. Forced military training

1487. The Chamber finds that between 30 November 1996 and 1998, captured civilians, including men, women and children, were forced by the RUF to engage in military training by the RUF at various training bases such as Bayama and Bunumbu.[2778] The Chamber is of the view that trainees could not escape from the training camps, and that, during the training

[2775] *Supra* paras 1430-1431.
[2776] *Supra* paras 1432-1433.
[2777] *Supra* paras 1240-1245.
[2778] *Supra* paras 1434-1442.

process, many trainees died because they were subjected to beatings, or shot or died as a result of a fall from a "monkey bridge" onto barbed wire during training. Similarly, the Chamber concludes that the trainees were forced to undergo military training under the threat of physical violence, including death, and finds that it was a deprivation of liberty. The Chamber finds that the military training constitutes forced labour as it was a preparatory step to forcing these civilians to the front lines of the RUF's military efforts or to becoming the bodyguards of the RUF Commanders.

1488. The Chamber is therefore satisfied that from 30 November 1996 to 1998, civilians were forcibly trained for military purposes at Kailahun District. The Chamber concludes that those civilians were deprived of their liberty and is of the view that military training in these circumstances constitutes forced labour. Consequently, the Chamber finds with respect to forceful military training of civilians that all the elements of enslavement, a crime against humanity, have been established for Kailahun District as charged in Count 13 of the Indictment.

6.2.3.5. Other forms of Forced Labour

1489. The Chamber is satisfied that in 1996 Bockarie ordered the construction of an airfield in Buedu, for which civilian labour was used. The Chamber finds, however, that it was not shown beyond reasonable doubt that the construction of this airstrip did in fact occur to completion and that, if so, it happened within the temporal jurisdiction of the Court; that is, after 30 November 1996.[2779] As a result, the Chamber declines to make a finding on this act.

6.2.4. Terrorising the civilian population and Collective Punishment (Counts 1 and 2)

1490. The Prosecution alleges that members of the AFRC/RUF committed the crimes described above, specifically unlawful killings, sexual violence, abductions, forced labour, "as part of a campaign to terrorise the civilian population" and "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."[2780] In relation to Kailahun District, the alleged acts of terrorism and collective

[2779] Indictment, para. 16.
[2780] Indictment, para. 44.

punishment took place "at all times relevant to [the] Indictment, which we deem to mean from 30 November 1996 to about 15 September 2000.[2781]

6.2.4.1. Killings of 63 civilians accused of being Kamajors

1491. The Chamber finds that the killing of the 63 civilians near the roundabout in Kailahun Town by members of the RUF on the orders of Bockarie and in the presence of other senior RUF members including Gbao, was an act violence committed with the specific intent to spread terror among the civilians population. The Chamber concludes that this mass killing constitutes an act of terrorism, as charged in Count 1 of the Indictment.

1492. The Chamber also concludes that the killing of the 63 civilians was committed with the aim of indiscriminately punishing civilians perceived to be Kamajors or collaborators. The Chamber finds beyond reasonable doubt that this act constitutes collective punishment, as charged in Count 2 of the Indictment.

6.2.4.2. Sexual Violence and Enslavement in Kailahun District

1493. The Chamber recalls its general observations on sexual violence as acts of terrorism.[2782] The Chamber is satisfied that the consistent pattern of conduct as demonstrated in our findings on sexual slavery and 'forced marriage' were committed with the requisite specific intent to terrorise the civilian population in Kailahun District. Accordingly, we find that these acts constitute acts of terrorism as charged in Count 1.

1494. The Chamber finds that the Prosecution has failed to establish beyond reasonable doubt that the perpetrators of the crimes of enslavement in Kailahun District, in relation to forced farming, acted with the specific intent to terrorise the civilian population. We therefore find that the elements of Count 1 have not been established in respect of these acts.

1495. The Prosecution has not adduced evidence to prove beyond reasonable doubt that AFRC/RUF rebels who committed the crimes of rape, sexual slavery, 'forced marriage,' outrages upon personal dignity and enslavement in Kailahun District did so with the specific intent of collectively punishing the victims for acts for which some or none of them may have

[2781] Indictment, paras 16, 83.
[2782] *Supra* paras 1346-1352.

been responsible. The Chamber therefore finds that these crimes did not constitute acts of collective punishment as charged in Count 2.

7. Crimes in Koinadugu and Bombali Districts

7.1. Findings for Koinadugu District

1496. The Prosecution alleges that between about 14 February 1998 and 30 September 1998, members of the AFRC/RUF forces committed crimes as charged in Counts 1 to 14 in multiple locations in Koinadugu District. The time frame for Count 12 is "at all times relevant to the Indictment"[2783] which we consider to mean from 30 November 1996 to about 15 September 2000.[2784]

1497. The Chamber has already found in its Rule 98 Decision that no evidence was led on Counts 3 to 5 in relation to Heremakono, Kabala, Kumalu, Kurubonla, Katombo and Kamadugu;[2785] no evidence was led on Counts 6 to 9 in relation to Kabala, Heremakono and Fadugu;[2786] no evidence was led on Counts 10 to 11 in relation to Konkoba (Kontoba);[2787] no evidence was led on Count 13 in relation Heremakono, Kumala (Kamalu) and Kamadugu[2788]; and no evidence was led on Count 14 in relation to Heremakono and Kamadugu.[2789]

1498. The Chamber heard evidence of the commission of unlawful killings, rape, sexual slavery, force marriages, mutilations, enslavement, looting and the training and use of children in active participation in hostilities in locations in Koinadugu District, including Kabala,[2790] Seraduya,[2791] Fadugu,[2792] Koinadugu town,[2793] Lengekoro,[2794] Kondembaia, Yifin, Kromanta,[2795]

[2783] Indictment para. 68.
[2784] Indictment, paras 16, 83.
[2785] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 18.
[2786] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, pp. 23-24.
[2787] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 27.
[2788] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 31.
[2789] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 34.
[2790] Transcript of 7 April 2005, TF1-263, p. 10; Transcript of12 July 2005, TF1-361, pp. 52-53, 55 (CS).
[2791] Transcript of 17 May 2005, TF1-172, pp. 21-22.
[2792] Transcript of 2 August 2005, TF1-329, pp. 4-5.
[2793] Transcript of 8 July 2005, TF1-212, pp. 109-110.
[2794] Transcript of 2 March 2006, TF1-213, pp. 7-8.
[2795] Transcript of 2 August 2005, TF1-215, pp. 72-73.

Alikalia,[2796] Badela,[2797] and Dankawalie.[2798]

1499. The Chamber finds that the fighters who committed these crimes were under the command of the AFRC and Superman.[2799] The Chamber has found that at that time no joint criminal enterprise existed between the leaders of the RUF and those AFRC/RUF Commanders in Koinadugu District.[2800] Furthermore, the Chamber finds that the RUF High Command had no effective control over those fighters in Koinadugu and Bombali Districts.

1500. The Chamber finds that these acts were primarily committed by AFRC troops under the command of SAJ Musa[2801] or Gullit.[2802] While a small number of RUF accompanied the AFRC forces in these districts,[2803] these fighters were subordinate to AFRC leaders and did not have effective control over AFRC fighters.[2804] The Chamber further finds that the AFRC forces in these districts did not take orders from RUF Commanders based in other locations.[2805] Even though Superman briefly joined the AFRC forces under the command of SAJ Musa,[2806] the Chamber is not satisfied that there existed then a common plan between the two groups as originally contemplated and as charged in the Indictment.[2807] The Chamber is therefore satisfied that the crimes in Koinadugu District cannot be attributed to the Accused for the following reasons.

1501. First, at that time Koinadugu District was controlled primarily by AFRC troops under the command of SAJ Musa and General Bropleh from the STF.[2808] Both Commanders defected from the main body of RUF and AFRC troops following the February 1998 ECOMOG

[2796] Transcript of 5 July 2005, TF1-272, p. 32.
[2797] Transcript of 2 August 2005, TF1-215, pp. 75-76.
[2798] Transcript 8 of July 2005, TF1-212, pp. 98-99.
[2799] *Supra* paras 851-854.
[2800] *Supra* paras 851-854.
[2801] Transcript of 12 July 2005, TF1-361, pp. 47-49 (CS).
[2802] Exhibit 119, AFRC Transcript of 23 May 2005, TF1-334, pp. 42, 52.
[2803] Transcript of 21 July 2005, TF1-360, pp. 7-9 (CS).
[2804] Transcript of 19 October 2004, George Johnson, pp. 48-49. *See supra* paras 851-854.
[2805] Transcript of 25 July 2005, TF1-360, p. 4 (CS); Exhibit 119, AFRC Transcript of 23 May 2005, TF1-334, pp. 41-42; Transcript of 7 July 2006, TF1-334, pp. 38, 51 (CS).
[2806] Transcript of 21 July 2005, TF1-360, pp. 5-6 (CS); Transcript of 16 May 2007, Issa Hassan Sesay, pp. 15-16.
[2807] *Infra* para. 2076.
[2808] Transcript of 7 April 2005, TF1-263, p. 47 Transcript of 12 July 2005, TF1-361, pp. 43-44; Transcript of 5 December 2005, TF1-184, pp. 14-16.

intervention.[2809] The Chamber has not heard any evidence that would suggest that RUF fighters under RUF command were present in Koinadugu District before Superman's arrival in about August 1998. However, even after Superman arrived in Koinadugu District, he had no effective control over SAJ Musa, who refused to take orders from Bockarie or Superman.[2810]

1502. Second, the Chamber heard evidence of crimes that were committed by Superman's troops following his redeployment from Kono District to Koinadugu District after the failed Fiti-Fata mission in August 1998.[2811] The Chamber is satisfied that Superman at that point in time was no longer under the effective control of Sam Bockarie or Sesay as the RUF leadership. The Chamber finds that, two weeks after Superman's departure, Bockarie ordered all stations to cease communication with Superman,[2812] because he did not obey any orders and instructions from Bockarie or Sesay.[2813]

1503. Third, the Chamber finds that following the departure of the AFRC forces from Kono District under the command of Gullit, the JCEthat had existed between the RUF and the AFRC as of the coup of May 1997 ceased to exist.[2814] As the Prosecution has limited itself on a pleading of a common purpose between members of the AFRC and RUF, the Chamber cannot make a finding on any JCE that may have existed between individual members of the RUF after the cessation of the common purpose between the RUF and AFRC, as pleaded in the Indictment.

1504. In addition, the Chamber finds that the evidence does not clearly delineate the specific factions that committed the crimes in Koinadugu District. As the Chamber has found that the

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[2809] Exhibit 119, Transcript of 19 May 2005, TF1-334, p. 14; TF1-360 testified that after Gullit left Kono, Gullit refused to take any orders from the RUF command, Transcript of 25 July 2005, TF1-360, p. 4 (CS).

[2810] There were three groups of soldiers in Koinadugu District: the AFRC led by SAJ Musa, the STF commanded by Bropleh, and the RUF commanded by Superman. Transcript of 19 January 2005, TF1-071, p. 54; Transcript of 18 July 2005, TF1-361 p. 44 (CS); Transcript of 25 July 2005, TF1-360, p. 3 (CS); Transcript of 5 December 2005, TF1-184, pp. 22-23; Transcript of 18 May 2007, Issa Sesay, p. 23. As Johnny Paul Koroma was not in contact with the AFRC forces until 1999, SAJ Musa declared his group to be independent from Koroma: Transcript of 22 July 2005, TF1-360, p. 42-43 (CS).

[2811] Transcript of 17 July 2006, TF1-041, p. 33 (CS); Transcript of 30 May 2007, Issa Sesay, p. 33; Transcript of 15 January 2008, DIS-214, p. 113 (CS); Transcript of 24 April 2008, DMK-087, pp. 40-41.

[2812] Exhibit 119, Transcript of 12 July 2005, TF1-361, pp. 56-57 (CS); Transcript of 16 May 2007, Issa Hassan Sesay, p. 16.

[2813] Transcript of 16 May 2007, Issa Hassan Sesay, pp. 16, 23-24. The week Superman left Kono for Koinadugu, Bockarie instructed Kallon to report to Buedu, on punishment: Transcript of 16 May 2007, Issa Hassan Sesay, p. 16; Transcript of 18 May 2007, Issa Hassan Sesay, p. 21

[2814] *Supra* para. 1500.

troops of SAJ Musa, Superman or Gullit's were neither under the effective control of Bockarie nor any Commander of the main RUF movement and that no JCE between members of the AFRC and RUF existed, the Chamber cannot attribute any responsibility for those crimes to the Accused.

1505. For all the above reasons the Chamber has chosen, for reasons of judicial economy, not to address and determine factual and Legal Findings for the Koinadugu crime bases. The Chamber has generally considered the evidence for other necessary findings in this case, although the Chamber reiterates that responsibility for crimes committed in Koinadugu cannt be attributed to the Accused.

7.2. Findings for Bombali District

1506. The Prosecution alleges that between about 1 May 1998 and 30 November 1998, members of AFRC/RUF committed crimes as charged in Counts 1 to 14 in multiple locations in Bombali District. The time frame for Count 12 as charged in the indictment is "at all times relevant to the Indictment"[2815], and therefore broader and not limited to between about 14 February 1998 and 30 September 1998. The Chamber has already held that at all times relevant to the Indictment means 30 November 1996 to 15 September 2000.

1507. The Chamber finds that the evidence adduced in relation to the crimes charged in Bombali District during the time frame specified in the Indictment are all attributable to AFRC forces under the control of Gullit.[2816] While there was a small number of RUF fighters amongst these troops, the most senior RUF Commander amongst them was Major Alfred Brown, a radio operator who was not in a position of command over fighters.[2817]

1508. The Chamber reiterates its findings that the AFRC troops broke away from the RUF and that from May 1998 onwards no JCE existed between the leadership of those two groups. In addition the Chamber finds that the troops under the control of Gullit, O-Five and the STF were not under the effective control of Bockarie or the High Commander of the RUF. Furthermore, the Chamber finds that the AFRC forces did not receive any substantial

[2815] Indictment para. 68.
[2816] Transcript 14 October 2004, George Johnson, pp. 88-92; Transcript 19 October 2004, George Johnson, p. 93; Exhibit 119, Transcript from AFRC Trial, Transcript 23 May 2005, TF1-334, pp. 42, 52, 55, 58-59, 70-71, 82, 85.
[2817] Transcript of 21 July 2005, TF1-360, p. 11 (CS); Transcript 5 December 2005, TF1-184, pp. 26-27.

assistance from the RUF during their operations.

1509. For all the above reasons the Chamber has chosen, for reasons of judicial economy, not to address and determine factual and Legal Findings for the Bombali crime bases in more detail. The Chamber has, however, generally considered the evidence for other necessary findings in this case, although the Chamber reiterates that responsibility for crimes committed in Koinadugu cannt be attributed to the Accused.

8. Crimes in Freetown and the Western Area

8.1. Factual Findings on Freetown and the Western Area

8.1.1. Background to the AFRC Attack on Freetown

1510. The Western Area is the smallest of Sierra Leone's administrative regions. Its headquarters, Freetown, is the capital of the country and the seat of its government. The Western Area borders Moyamba and Port Loko Districts to the east and is otherwise bordered by the Atlantic Ocean. Throughout the Indictment period, the capture of Freetown in order to ensure political and *de facto* control over Sierra Leone was a stated goal for both the AFRC and the RUF. Following the route taken by the AFRC rebels for the invasion of Freetown, the principal towns in the Freetown Peninsula relevant to the Indictment are Benguema, Waterloo, Hastings, Allen Town, Calaba Town, Wellington, Kissy and Freetown.

8.1.1.1. Perpetrators of the Attack on Freetown

1511. The Chamber has found that in December 1998 AFRC forces advanced from Bombali and Port Loko Districts towards Freetown. The forces attacked Freetown on 6 January 1999 under the command of Gullit. Gullit was in radio communication with Bockarie prior to and throughout the attack and the RUF eventually deployed reinforcements to Waterloo to assist the AFRC. These reinforcements, however, remained ensconced in battle with ECOMOG troops stationed at Jui and Kossoh Town and were unable to advance further into the Freetown Peninsula. The AFRC forces captured State House in Freetown on the first day of their invasion, but their success was short-lived and they were soon forced to retreat. Following the loss of State House, the rebels retreated through Wellington to Calaba Town and then Allen Town, leaving a trail of violence and destruction in their wake, before eventually

regrouping in Benguema. The retreating AFRC forces met with the RUF at Waterloo approximately three weeks after the attack began. From Waterloo, the two groups, AFRC and RUF, cooperated in a second attack on Freetown but were forced back by ECOMOG.[2818]

1512. The Chamber has found that countless crimes were committed during the attack on Freetown, further described hereafter. The Chamber observes that many civilian witnesses identified the rebel forces that committed crimes during the Freetown attack as members of the RUF. The RUF was the most widely known rebel group, both within Sierra Leone and internationally at the time and the Chamber finds that it was a common misperception that all rebel attacks were attributable to the RUF.[2819] The Chamber considers that Bockarie's conduct in making announcements over international radio networks in relation to the AFRC attack may also have contributed largely to the incorrect assumption that the troops in Freetown were under his control.[2820]

1513. The Chamber notes that it was difficult for civilians to distinguish the different rebel groups fighting in the armed conflict.[2821] The Chamber moreover notes that civilians typically identified the AFRC troops by their attire in military fatigues, while the RUF fighters generally wore civilian clothing or mixed combat and civilian clothing.[2822] However, the Chamber considers that by the time of the Freetown attack, this rudimentary distinction no longer adequately reflected the reality of AFRC and RUF operations. The AFRC troops had been fighting a guerilla war for nearly one year by the time they attacked Freetown and they lacked proper equipment and uniforms.[2823] In addition, many among their ranks were civilians who were forcibly recruited and trained.[2824] The Chamber further recalls that on occasion rebels from both factions were dressed in military fatigues captured from attacks on ECOMOG

[2818] *Supra* para. 894.

[2819] *See*, for example, Exhibit 99, Security Council Resolution 1270, October 1999, pp. 3525-3529; Exhibit 156, Joint Communiqué of the UN Special Representative to Sierra Leone and the RUF signed February 1999 in Abidjan, pp. 19099-19021; Exhibit 161, Third UNOMSIL Progress Report, December 1998; Exhibit 162, Sixth UNOMSIL Progress Report, June 1999, pp. 19150, 19153-19154. Each of these reports fails to distinguish between the RUF and the AFRC or mentions only the RUF.

[2820] The Chamber has found that this was not the case: *supra* paras 39, 881.

[2821] Transcript of 19 October 2004, George Johnson, p. 131, stating that rebels was the common name for both the RUF and SLA (AFRC) fighting factions.

[2822] Transcript of 29 July 2004, TF1-235, pp. 52-53, 77-78 (CS); Transcript of 22 October 2004, TF1-078, pp. 83-84, 89-90; Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, p. 15.

[2823] Transcript of 29 July 2004, TF1-235, pp. 52-53, 77-78 (CS).

[2824] Exhibit 119, Transcript from AFRC Trial, Transcript of 24 May 2005, TF1-334, p. 24, stating that abducted civilians were trained for the Freetown operation.

soldiers.[2825]

1514. For the foregoing reasons, the Chamber has treated identifications by civilian witnesses of RUF rebels as the perpetrators of attacks in Freetown as inherently unreliable. In light of our findings on the locations which the AFRC forces passed on their retreat from Freetown and the fact that RUF fighters under the control of Bockarie did not advance past Waterloo, the Chamber finds that the perpetrators of the crimes which we have found were committed in Freetown and the Western Area were fighters under the command of Gullit. In this respect, the Chamber recalls that a small contingent of low-ranking RUF fighters participated in the AFRC attack on Freetown, we find these men were subordinate to Gullit's command.[2826]

1515. The Prosecution has not adduced evidence to establish that the RUF forces under the command of Bockarie in the Hastings-Waterloo area committed crimes against humanity or war crimes during the period in which the AFRC forces were attacking and retreating from Freetown, or that crimes were committed during the second, unsuccessful joint attack carried out shortly thereafter.

8.1.1.2. Targeting of the civilian population in Freetown

1516. The Chamber has heard overwhelming evidence of a general nature which establishes that the AFRC forces in Freetown intended to direct a campaign of violence against the civilian population.

1517. Upon their arrival in Freetown on the morning of 6 January 1999, Gullit, Five-Five and Bazzy ordered their fighters to embark on a campaign which they called "gori-gori", meaning that civilians would be killed or mutilated and government property would be destroyed.[2827] We find that the intention behind this stratagem was to intimidate the civilian population in order to achieve victory and a lull in the fighting.[2828]

1518. The rebels carried out abductions, rapes, lootings and killings in and around

[2825] Transcript of 14 October 2004, TF1- George Johnson, pp. 154-155; Transcript of 28 November 2005, TF1-101, pp. 55-56. *See supra* paras 1147-1151.
[2826] *Supra* para. 845.
[2827] Transcript of 18 October 2004, George Johnson, pp. 46-47, 53-56; Transcript of 21 July 2005, TF1-360, pp. 34-35 (CS); Transcript of 5 December 2005, TF1-184, pp. 47-53.
[2828] Transcript of 21 July 2005, TF1-360, pp. 34-35 (CS).

Freetown.[2829] Witnesses testified to the widespread burning of civilian homes and key government buildings, and an estimated 85% of the buildings in the eastern part of Freetown were destroyed by fire.[2830]

1519. The fact of the retreat appeared to instil a sense of paranoia among the AFRC troops and the retreat was characterised by vicious attacks on civilians.[2831] Numerous civilians, including children, were abducted during the initial attack and the retreat.[2832] Gullit ordered those troops under his command during the retreat to shoot civilians, and to abduct "young girls, young children" in the hope that the commission of such atrocities would draw the attention of the international media to the conflict.[2833]

1520. Many abducted women and girls were subjected to sexual violence. Expert Witness TF1-081 testified that of 1,168 patients examined between March and December 1999, 99% had been abducted following the 6 January 1999 invasion, the "vast majority" of whom originated from Freetown.[2834] Out of these patients, 274 (23.4%) had been beaten for refusing to engage in sexual relations or carry heavy looted goods; 648 (58.5%) of the abductees had been subjected to rape, some by more than two and up to 30 men; 281 (24.1%) complained of vaginal discharge and 327 (27.9%) had pelvic inflammatory disease, both of which are transmitted through sexual intercourse; and 200 (17.1%) were pregnant, over 80% of whom were girls between the ages of 14 and 18.[2835]

1521. Amputations were a hallmark of the retreating forces and many civilians were subjected

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[2829] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 29-43; Transcript of 21 July 2005, TF1-360, pp. 34-36 (CS).

[2830] Exhibit 61A, Transcript from AFRC Trial, Transcript of 6 July 2005, TF1-169, pp. 14-18, 88-89 (CS); Exhibit 61C, Exhibit P28 from the ARFC Trial. *See also* Exhibit 59A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 27-29; Exhibit 61B, Transcript from AFRC Trial, Transcript of 7 July 2005, TF1-169, pp. 17-28 (CS); Exhibit 61D, Exhibit P29 from the ARFC Trial, dated 4 February 1999.

[2831] Transcript of 18 October 2004, George Johnson, pp 65-76; Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 62-64; 83-84; 97-98; 100-103; Transcript of 5 December 2005, TF1-184, p. 56-64.

[2832] Exhibit 119, Transcript from AFRC Trial, Transcript of 15 June 2005, TF1-334, p. 3; Transcript of 29 November 2005, TF1-022, p. 39; Transcript of 18 October 2004, George Johnson, pp. 65-67; *see also* Transcript of 11 July 2006, TF1-296, pp. 108-113 (CS) and Transcript of 12 July 2006, TF1-296, p. 14 (CS) regarding the rehabilitation of 90 children abducted in the attack.

[2833] *See*, for example, Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 62-64, 78-79.

[2834] Transcript of 6 April 2006, TF1-081, pp. 19-20; Exhibit 104A, Transcript from the AFRC Trial, Transcript of 4 July 2005, TF1-081, pp. 10-11; Exhibit 104B, Exhibit P25 from AFRC Trial Witness's Report, p. 6319.

[2835] Exhibit 104B, Exhibit P25 from AFRC Trial Witness's Report, pp. 6319-6320.

to this crime at locations including Calaba Town, Upgun and Kissy.[2836] According to witness George Johnson, AFRC Commander Five-Five issued an order to commit 200 civilian amputations and to send the amputees to the Government.[2837] Several witnesses testified that rebels asked civilians whether they wanted "short sleeves" or "long sleeves" and their arms were amputated either at the elbow or at the wrist accordingly.[2838] Rebels were also known to amputate four fingers, leaving only the thumb, which they referred to as "one love" and which they encouraged the victims to show to Tejan Kabbah.[2839]

1522. The Chamber has also examined documentary evidence which establishes that the scale of violence was such that there can be no doubt that the infliction of violence on civilians was a primary objective of the attacking forces.[2840]

8.1.2. Crimes Committed During the Attack on Freetown

8.1.2.1. State House

1523. Approximately 30 persons were killed by the rebels at the State House, including soldiers, police, and civilians.[2841] On 6 January 1999, the rebels took women to State House where they were raped.[2842] Each of the senior Commanders, and many of the troops, had captured women at their disposal.[2843] Many of these women remained with the fighters during and after the withdrawal from Freetown.[2844]

8.1.2.2. Kingtom

1524. On 7 January 1999 the rebels managed to regain control of Kingtom, which had been captured in an ECOMOG offensive. The rebels, deeming the civilians of Kingtom to be traitors due to the fact that ECOMOG had controlled their residential area, shot civilians and

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[2836] Transcript of 18 October 2004, George Johnson, pp. 65-67; Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 68-70, 83-84; Transcript of 28 November 2005, TF1-097, p. 90-100; Transcript of 29 November 2005, TF1-022, p. 35-37; Transcript of 29 November 2005, TF1-093, pp. 105-112 (CS); Transcript of 5 December 2005, TF1-184, p. 56-64.
[2837] Transcript of 18 October 2004, George Johnson, pp 65-67.
[2838] Transcript of 29 July 2004, TF1-235, p. 60; Transcript of 29 November 2005, TF1-093, pp. 108.
[2839] Transcript of 29 November 2005, TF1-093, p. 109.
[2840] Exhibit 174, Human Rights Watch, *Murder*, pp. 19378-19379.
[2841] Transcript of 18 October 2004, George Johnson, p. 54.
[2842] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, p. 25.
[2843] Exhibit 119, Transcript from AFRC Trial, Transcript of 15 June 2005, TF1-334, pp. 3-5
[2844] Exhibit 119, Transcript from AFRC Trial, Transcript of 15 June 2005, TF1-334, p. 5.

burned their houses.[2845]

8.1.2.3. Guard Street

1525. During the retreat from Freetown, TF1-334 witnessed Captain Blood execute three civilians with a gun and four others with machetes. Captain Blood also burned TF1-334's house.[2846] When TF1-334 protested, he told TF1-334 that he was following orders.[2847]

8.1.2.4. Upgun and Fourah Bay

1526. At Savage Square, following the death of one of the rebels, Gullit ordered the shooting of all civilians of Fourah Bay and the burning of the area in retribution. Gullit, Bazzy and Bomb Blast advanced to Fourah Bay where, together with the troops, they joined in the slaughter of civilians and the commission of arson.[2848]

1527. Gullit had further been informed that civilians were harbouring ECOMOG troops in a mosque in Kissy. He therefore concluded that all those sheltering in mosques were to be considered enemies and gave orders that they should be shot to death.[2849] During the rebel withdrawal from Freetown, witness George Johnson saw at least seven bodies outside a mosque in Calaba Town, and more dead bodies inside the building.[2850]

1528. TF1-093, a former RUF fighter, had been living with her brother and her child in Freetown since 1998.[2851] On 6 January 1999, TF1-093's brother was shot and killed during the attack on Freetown.[2852] While in Cline Town, TF1-093 met up with a named Commander in charge of several groups, who recognised her from her time with the RUF rebels. He proceeded to divide the rebels into groups and gave TF1-093 command of a group of over 50 men, women and children, all of whom were armed with knives and had been instructed to kill civilians.[2853]

[2845] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 43-46.
[2846] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 72-73.
[2847] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 72-73.
[2848] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 62-68.
[2849] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 87-89.
[2850] Transcript of 18 October 2004, George Johnson, pp. 76-78.
[2851] Transcript of 29 November 2005, TF1-093, pp. 103-104 (CS).
[2852] Transcript of 29 November 2005, TF1-093, p. 105 (CS).
[2853] Transcript of 29 November 2005, TF1-093, pp. 104-107 (CS).

1529. TF1-093 and the fighters under her command burned houses and killed and raped civilians in the Upgun and Fourah Bay Road areas and around the Eastern Police Station.[2854] They killed more than 20 people, not including those that were caught inside burning houses.[2855] TF1-093 stated that she had to obey the orders to commit those crimes as otherwise she would have been punished, possibly with death.[2856]

1530. TF1-334 testified to an episode in Upgun where Five-Five announced that amputations would begin and demonstrated the methodology to be followed in this respect on two civilians.[2857] He told those two victims to go to Tejan Kabbah and retrieve their hands. The amputation of ten other civilians followed and over the coming days other rebels committed numerous amputations in accordance with his example.[2858] TF1-093 also stated that those under her command amputated hands and fingers and that, on 6 January 1999, she had personally witnessed over 100 civilian amputations being carried out.[2859]

8.1.2.5. Wellington

8.1.2.5.1. Killing and Looting of TF1-235 and his family

1531. In the early hours of the morning on 6 January 1999, while it remained dark, TF1-235 was in Wellington and heard small arms fire coming from Calaba Town. The witness, fearing that Freetown was being invaded in the east by armed rebels, decided to move his family of ten by car towards the west of Freetown. Hundreds of other civilians were also moving towards the west of Freetown from Calaba Town, Allen Town and Wellington.[2860]

1532. At Grassfield, traffic congestion forced the vehicles to stop and TF1-235 and his family alighted from their car. In the light of a flare fired by an unknown person, TF1-235 observed men and boys armed with rifles and RPG tubes. Some of the fighters were clothed in camouflage rain gear and others in civilian apparel.[2861] As a group of fighters passed him, he heard one state: "SLA on the move. They thought we will never be back, but now we are

[2854] Transcript of 29 November 2005, TF1-093, pp. 105-107 (CS).
[2855] Transcript of 29 November 2005, TF1-093, pp. 105-106 (CS).
[2856] Transcript of 29 November 2005, TF1-093, p. 107 (CS).
[2857] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 68-70.
[2858] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 68-70.
[2859] Transcript of 29 November 2005, TF1-093, pp. 105-112 (CS).
[2860] Transcript of 29 July 2004, TF1-235, pp. 47-49 (CS).
[2861] Transcript of 29 July 2004, TF1-235, pp. 49-51 (CS).

back."[2862]

1533. By this time TF1-235's family were surrounded by armed men, one of whom pushed his rifle into TF1-235's back and demanded money. TF1-235 gave him Le 200.000 which money he had reserved to pay his children's education fees and which he had carried with him to prevent its loss.[2863] More armed men arrived at the scene and someone was heard to say: "If these are civilians just leave them alone, just leave them alone."[2864] The family attempted to regain the safety of their vehicle but this move was detected by an "eight to ten year old" boy shouldering an RPG. A rebel ordered the family out of the car, demanded money and escorted them to a side street where he forced them to sit in a line.[2865] TF1-235's wife gave the man Le 9.000.[2866]

1534. At that point another three or four men armed with rifles and dressed in military camouflage arrived, one of whom accused TF1-235 and his family of being supporters of ECOMOG and of Tejan Kabbah, saying that, as a consequence, they should be taught a lesson and killed.[2867] The man then rapidly fired his gun at the family from a distance of three or four metres, which was close enough to cause TF1-235 to receive cordite burns to his knees.[2868] TF1-235 was shot in the arm; his wife received an injury to the back of her head from a deflecting bullet; and their eldest daughter received a superficial wound to the midriff. Although three survived, TF1-235's other seven children either died instantly or within the next few days.[2869]

1535. TF1-235, while pretending to be dead, heard one of the armed men state to the perpetrator that he "should never have shot them in the first place." Nonetheless, the perpetrator proceeded to remove TF1-235's wrist watch.[2870] On the following day, 7 January 1999, TF1-235 and his surviving family members arrived at a medical clinic for treatment.[2871]

8.1.2.5.2. Killings and Amputations at Loko Town

[2862] Transcript of 29 July 2004, TF1-235, p. 50 (CS).
[2863] Transcript of 29 July 2004, TF1-235, pp. 51-51 (CS).
[2864] Transcript of 29 July 2004, TF1-235, p. 51 (CS).
[2865] Transcript of 29 July 2004, TF1-235, pp. 51-52 (CS).
[2866] Transcript of 29 July 2004, TF1-235, p. 52 (CS).
[2867] Transcript of 29 July 2004, TF1-235, p. 53 (CS).
[2868] Transcript of 29 July 2004, TF1-235, p. 53 (CS).
[2869] Transcript of 29 July 2004, TF1-235, pp. 53-54 (CS).
[2870] Transcript of 29 July 2004, TF1-235, pp. 55-56 (CS).
[2871] Transcript of 29 July 2004, TF1-235, p. 57 (CS).

1536. On 6 January 1999, TF1-331 was living in Wellington with her husband when the rebels attacked.[2872] Together with other civilians, they fled to the bush where they remained in hiding for one week.[2873] They returned to Wellington when they were told that the rebels had said that it was safe to come out of hiding. TF1-331 observed that all the houses in her neighbourhood had been torched and "everything was on fire."[2874] In a field at Loko Town, rebels grouped TF1-331, her husband and a number of civilians into a line and then shot and killed TF1-331's husband.[2875] The rebels were so many that TF1-331 was unable to estimate their number. A rebel named Yama, who was from Port Loko, cleaved a child in two with a machete. The child looked to be around six years old.[2876] Yama claimed to have made this killing as "a sacrifice for the peace" and told the civilians to "go to Tejan Kabbah and tell him we want peace."[2877]

1537. Following this, TF1-331 was forced to place her arm on a log and after three strikes with a blunt cutlass her arm was eventually severed. TF1-331 walked in the direction of a hospital, but was stopped by a different group of rebels who thrashed her with a bottle, threatened to kill her and accused her of being the "Mother of Kabbah".[2878] An unknown person pleaded with the rebels to spare TF1-331's life, but the rebels stole Le 50.000 from her and kicked her into a ditch.[2879] TF1-331 took refuge in the bush for three days. On the fourth day, with her suppurating injury, she managed to reach the Eastern Police Station, where she lapsed into unconsciousness and was transferred to Connaught Hospital.[2880] The hospital was crowded with injured civilians and there was no medication.[2881] The witness saw many other injured civilians from various locations, most of whom had severed limbs.[2882] Among the injured she found her uncle whose foot had been severed by the rebels.[2883] TF1-331 was told by people from her neighbourhood that her sister, who had been seven months pregnant, was

[2872] Transcript of 22 July 2004, TF1-331, p. 45
[2873] Transcript of 22 July 2004, TF1-331, p. 45
[2874] Transcript of 22 July 2004, TF1-331, pp. 46-47.
[2875] Transcript of 22 July 2004, TF1-331, pp. 47, 49, 51.
[2876] Transcript of 22 July 2004, TF1-331, p. 47
[2877] Transcript of 22 July 2004, TF1-331, p. 47.
[2878] Transcript of 22 July 2004, TF1-331, p. 48.
[2879] Transcript of 22 July 2004, TF1-331, pp. 47-48, 50.
[2880] Transcript of 22 July 2004, TF1-331, p. 448.
[2881] Transcript of 22 July 2004, TF1-331, pp. 48-50.
[2882] Transcript of 22 July 2004, TF1-331, p. 50.
[2883] Transcript of 22 July 2004, TF1-331, p. 51.

killed by the rebels.[2884]

8.1.2.5.3. Killing, Looting and Abduction at a clinic

1538. TF1-235 was at a clinic in Wellington during the attack on Freetown. The clinic was full of civilians with gunshot wounds who had been attacked in their homes or while trying to flee from the east of Freetown.[2885] He observed other patients with gunshot wounds and saw a young man die.[2886] One early morning at 4am, a group of rebels entered the clinic and threatened to douse the building with petrol and set it alight and the patients, including TF1-235 and his surviving family, fled. The rebels threatened to rape the doctor's wife if he did not hand over money. The doctor was forced to give them Le 300.000 and a 50kg bag of rice.[2887] The armed men also took the belongings left behind by the fleeing patients, including what was left of TF1-235's money and jewellery, and also stole bandages, medicines and food from the clinic.[2888] The rebels abducted a boy who worked at the clinic, forcing him to accompany them with the bag of rice.[2889]

8.1.2.5.4. Looting and Burning of TF1-235's home

1539. Following his escape from the clinic in Wellington, TF1-235 and his family found shelter in the home of a friend for several days.[2890] One night, two rebels in civilian clothing armed with a hand grenade entered the house. One of the rebels, noting the injury to TF1-235's arm, suspected him of being a Kamajor. The man told the occupants of the house that this was their "last day of grace" and threatened that he and his companion would return the next day with machetes to sever their arms to "short sleeves and long sleeves" and send the severed limbs in plastic bags to Tejan Kabbah.[2891] The second rebel meanwhile searched the house and looted the occupants' personal property.[2892]

1540. The following day, 22 January 1999, TF1-235 and his family decided to return to their

[2884] Transcript of 22 July 2004, TF1-331, pp. 50-51.
[2885] Transcript of 29 July 2004, TF1-235, p. 57 (CS).
[2886] Transcript of 29 July 2004, TF1-235, p. 57 (CS).
[2887] Transcript of 29 July 2004, TF1-235, p. 58-59 (CS).
[2888] Transcript of 29 July 2004, TF1-235, p. 59 (CS).
[2889] Transcript of 29 July 2004, TF1-235, p. 59 (CS).
[2890] Transcript of 29 July 2004, TF1-235, p. 60 (CS).
[2891] Transcript of 29 July 2004, TF1-235, p. 60 (CS).
[2892] Transcript of 29 July 2004, TF1-235, p. 60 (CS).

home. Upon arrival they encountered 31 of their neighbours who had sought sanctuary behind the high walls of their compound. Two days later, seven rebels, including one boy, arrived at the compound and managed to break inside with a sledgehammer. Some of the men wore combat gear while the others wore plain clothes. The occupants of the house were unarmed and wearing civilian clothing. The civilians compiled their money and surrendered it to their assailants. Some were armed with rifles, and at least one man had a pistol.[2893] The rebels torched TF1-235's house but the occupants managed to escape via the rear wall.[2894] When TF1-235 later returned to his house, it had been burned to the ground.[2895]

8.1.2.6. Kissy

8.1.2.6.1. Killings at Kissy Police Station

1541. On the morning of 6 January 1999, TF1-104 observed the bodies of a police officer and a civilian at the Kissy Police Station in Freetown.[2896]

8.1.2.6.2. Killings and Beatings at a clinic

1542. At a medical clinic in Kissy, TF1-104 treated many people who claimed to have been injured by the rebels, including one who had lost seven family members in a shooting incident at Wellington. TF1-104 witnessed the death of two patients on that day.[2897] TF1-104 also witnessed two fighters attempt to rape a nurse whom they had followed into a room and closed the door. Her screams prompted Captain Shepard, an AFRC officer, to order the two men to desist, which order they obeyed.[2898]

1543. On 15 January 1999, TF1-104 was working at the clinic when he witnessed uniformed rebels push a man out of a car and shoot him.[2899] The witness went to the man's aid but he was dead.[2900]

1544. Subsequently, at about 5:00pm on 18 January 1999, a group of fighters entered the

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[2893] Transcript of 29 July 2004, TF1-235, pp. 61-64 (CS).
[2894] Transcript of 29 July 2004, TF1-235, p. 61 (CS)
[2895] Transcript of 29 July 2004, TF1-235, p. 63 (CS).
[2896] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, p. 7 (CS).
[2897] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, pp. 9-11 (CS).
[2898] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, pp. 15-17, 45.
[2899] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, p. 19 (CS).
[2900] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, p. 19 (CS).

clinic and accused staff of treating Kamajors and ECOMOG soldiers.[2901] They then forced approximately 200 patients, staff and visitors outside the clinic and forced them to sit with their legs spread open.[2902] The rebels hit the civilians on the legs and head with a wooden stick and shot a Nigerian man.[2903] They then removed the civilians to a nearby house and shot at them until Captain Blood told them to stop. TF1-104 was injured in this attack and 15 civilians were killed.[2904] The survivors were taken back to the clinic but later that day the rebels returned, threatening that they would return at night to kill them and burn the building.[2905]

1545. TF1-104 escaped with his family and hid in the hills for two days.[2906] After he returned home, three rebels arrived at his home and accused him of being a soldier on account of his injury.[2907] The rebels took money from the witness and then locked him and his family in the house and set it alight.[2908] TF1-104 managed to escape.[2909]

8.1.2.6.3. Killings and Amputations of TF1-101 and others

1546. Following the 6 January 1999 invasion of Freetown, TF1-101 hid with his family in their home in Kissy for five to six days.[2910] When they emerged to search for food, TF1-101 and other civilians were held up at a checkpoint manned by rebels.[2911] The civilians were ordered to sit down, after which two of them were selected to be killed as a "sacrifice".[2912] The first man killed was repeatedly stabbed and his blood was collected by the rebels.[2913] The second man was shot and killed.[2914] The remaining civilians were ultimately released to return to their homes.

1547. A few days following this incident, TF1-101 witnessed two armed AFRC fighters in the vicinity of his residence who were later joined by a female Commander and more fighters.[2915]

[2901] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, pp. 23-24 (CS).
[2902] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, pp. 26-27 (CS).
[2903] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, p. 26 (CS).
[2904] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, pp. 26-28 (CS).
[2905] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, pp. 28-29 (CS).
[2906] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, pp. 29-30 (CS).
[2907] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, p. 31.
[2908] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, p. 32.
[2909] Exhibit 60, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-104, p. 31-33.
[2910] Transcript of 28 November 2005, TF1-101, p. 35.
[2911] Transcript of 28 November 2005, TF1-101, pp. 36-37.
[2912] Transcript of 28 November 2005, TF1-101, p. 38.
[2913] Transcript of 28 November 2005, TF1-101, pp. 39.
[2914] Transcript of 28 November 2005, TF1-101, pp. 39.
[2915] Transcript of 28 November 2005, TF1-101, p. 43.

TF1-101 heard the female Commander state that they must carry out Operation "No Living Thing". The rebels then shot and killed an elderly male passer-by.[2916] TF1-101 then heard gunshots and witnessed the deaths of two civilians.[2917] TF1-101's house, as well as other houses in the area, were torched and burned to the ground.[2918]

1548. The following morning, on 19 January 1999, seven rebels armed with guns, a cutlass and an axe arrived where TF1-101 and other neighbours were hiding.[2919] Their leader was called "Commando".[2920] The rebels forced TF1-101 and 23 other civilian men from their hiding place to a junction where a large wooden log had been placed. One by one, Commando ordered the civilians to place an arm on the log to be amputated. A civilian who refused to comply and begged for mercy was killed by Commando by a shot to the head.[2921] Another civilian who refused to put his arm on the log was also killed.[2922] Commando then executed a further six civilians.[2923] The rebels paused for some time and took drugs as the captured civilians waited. Commando then ordered that the heads of civilians be split open and five people were killed in this way.[2924]

1549. The rebels then forced TF1-101 to place his left hand on the wooden log and Commando ordered a junior rebel to cut it off.[2925] The junior rebel struck but the blow did not entirely amputate the hand. Taking the axe, Commando completed the amputation in two blows.[2926] He then proceeded to sever TF1-101's right hand which was completed with one swing of the axe.[2927] A rebel called Rambo arrived at the scene accompanied by other rebels attired in ECOMOG uniforms. Rambo objected to the mass violence and stated that he would punish the perpetrators. He provided TF1-101 with Le 100.000 and told him to go to the

[2916] Transcript of 28 November 2005, TF1-101, p. 44.
[2917] Transcript of 28 November 2005, TF1-101, p. 44.
[2918] Transcript of 28 November 2005, TF1-101, pp. 45-46.
[2919] Transcript of 28 November 2005, TF1-101, pp. 54, 58.
[2920] Transcript of 28 November 2005, TF1-101, pp. 46-47.
[2921] Transcript of 28 November 2005, TF1-101, pp. 48-49.
[2922] Transcript of 28 November 2005, TF1-101, p. 49.
[2923] Transcript of 28 November 2005, TF1-101, pp. 49-51.
[2924] Transcript of 28 November 2005, TF1-101, p. 52.
[2925] Transcript of 28 November 2005, TF1-101, p. 52.
[2926] Transcript of 28 November 2005, TF1-101, p. 53.
[2927] Transcript of 28 November 2005, TF1-101, p. 53.

hospital and seek help.[2928]

8.1.2.6.4. Killings at Rogbalan Mosque

1550. In January 1999, a large number of men, women and children including TF1-021 gathered to pray and seek shelter at the Rogbalan Mosque in Kissy. At approximately 12:30pm some 15 to 20 fighters entered the mosque. The men were armed with guns and machetes and some had covered their heads with plastic bags while others had painted their faces.[2929] The armed men approached TF1-021 and threatened to kill him. The witness begged for his life and gave them Le 80.000, being the total sum previously collected by the congregation in anticipation of an attack.[2930]

1551. The armed men took the money and began to fire at random, spraying bullets in all directions within the mosque.[2931] One of the gunmen stood on TF1-021, who was still alive, and said "We're not going to leave any soul around here to vote for this government for Tejan Kabbah."[2932] The gunman claimed that Kabbah was refusing to make peace with the rebels, who identified themselves by saying: "we are Junta, we are people's army."[2933]

1552. TF1-021 survived the attack but 36 of those who had sought refuge in the mosque were killed within its walls.[2934] Some time later, TF1-021 discovered more corpses at the gates of the mosque and seven more bodies at the Islamic School nearby. In total, TF1-021 counted 71 persons killed.[2935] Later that day, TF1-021 returned to his home and that it had been burned and that his child had died in the fire.[2936]

8.1.2.6.5. Killings, Amputations and Looting of TF1-022 and others

1553. On 22 January 1999 in Kissy, TF1-022 heard gunshots and saw many houses in the

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[2928] Transcript of 28 November 2005, TF1-101, pp. 55-57. The Chamber considers it likely that this rebel Commander was Rambo Red Goat, an AFRC fighter who had been with the RUF in Waterloo but broke away to join the AFRC in Freetown: *supra* para. 885.
[2929] Transcript of 15 July 2004, TF1-021, pp. 34-35.
[2930] Transcript of 15 July 2004, TF1-021, pp. 36, 39.
[2931] Transcript of 15 July 2004, TF1-021, p. 36.
[2932] Transcript of 15 July 2004, TF1-021, p. 37.
[2933] Transcript of 15 July 2004, TF1-021, p. 37.
[2934] Transcript of 15 July 2004, TF1-021, p. 36.
[2935] Transcript of 15 July 2004, TF1-021, p. 36. See also *supra* para. 1527 and *infra* para. 1553.
[2936] Transcript of 15 July 2004, TF1-021, p. 37. *See also* Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, p. 89.

vicinity on fire.[2937] A rebel ran to TF1-022's gate and shouted for money. At the same time, TF1-022 heard gunshots as a woman was shot by rebels.[2938] TF1-022's brother-in-law ran outside and was himself shot and injured.[2939] While TF1-022 and five youths were carrying his injured brother-in-law to Connaught Hospital, they were captured by seven rebels, who took them to a group of other captured civilians, including a 10-year old girl who was taken as a 'wife' by one of the rebels.[2940] The rebels ordered the civilians to strip and Le 5.000 was taken from TF1-022.[2941] The civilians were then led past Rogbalan Mosque in Kissy where TF1-022 noticed a pile of bodies.[2942]

1554. The civilians were taken to a Commander who ordered three young rebels to sever their hands.[2943] The rebels selected a person from the group of civilians and one of the three boys amputated his hand. TF1-022 was then selected by the Commander and one of his hands was severed and placed in a plastic bag. The rebels severed two fingers of the next civilian singled out and then shot and killed him.[2944] After the amputation, TF1-022 was sent away by the rebels. As he struggled home, he saw the rebels departing, taking with them many "little children" and captured women.[2945] TF1-022 later went to Connaught Hospital where he saw many other people with amputated limbs and learned of his brother-in-laws' death.[2946]

8.1.2.6.6. Amputations and Looting of TF1-097 and others

1555. TF1-097 was forced to flee to Kissy after his house in Tumbo was burned by Captain Blood in December 1998.[2947] On 6 January 1999 TF1-097 went into hiding for one week and then decided to return to Kissy to search for his sister. However, TF1-097 was captured at PWD Junction by rebels in civilian clothing.[2948] When he refused their demand for money, TF1-097 had his hands flogged twelve times by the rebels.[2949] When released, TF1-097 saw

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[2937] Transcript of 29 November 2005, TF1-022, p. 24.
[2938] Transcript of 29 November 2005, TF1-022, p. 25.
[2939] Transcript of 29 November 2005, TF1-022, pp. 26-28.
[2940] Transcript of 29 November 2005, TF1-022, pp. 29-33.
[2941] Transcript of 29 November 2005, TF1-022, p. 29
[2942] Transcript of 29 November 2005, TF1-022, p. 30. *See supra* paras 1550-1552.
[2943] Transcript of 29 November 2005, TF1-022, pp. 34-35.
[2944] Transcript of 29 November 2005, TF1-022, pp. 37, 59-60 (CS).
[2945] Transcript of 29 November 2005, TF1-022, p. 39.
[2946] Transcript of 29 November 2005, TF1-022, pp. 42-43.
[2947] Transcript of 28 November 2005, TF1-097, p. 76-80.
[2948] Transcript of 28 November 2005, TF1-097, pp. 82-83.
[2949] Transcript of 28 November 2005, TF1-097, p. 83.

many more rebels walking with machetes, axes and wooden sticks, and also observed them torching houses.[2950]

1556. On 21 January 1999, TF1-097, a family member and two neighbours were at the witness's house in Kissy when Captain Blood and another rebel entered the compound and threatened to set the house on fire.[2951] The two neighbours managed to escape. Captain Blood threatened that if the civilians did not pay him Le 400.000, he would cut off their hands.[2952] The rebel accompanying Captain Blood recognised TF1-097 from the burning of his house in Tumbo. As TF1-097 had no money, Captain Blood slashed his back and amputated his hand with a machete.[2953] The rebels told him to go and see Tejan Kabbah and that "he will give you your hands".[2954] Captain Blood then proceeded to amputate both hands of one of TF1-097's relatives and burned down the house.[2955] Later that night, from his hiding place, TF1-097 observed a rebel rape a number of women. He met other civilians who had been subjected to amputation, one of whom told him of his sister's rape. When TF1-097 went to a hospital the next day, he saw civilians whose limbs had been amputated.[2956]

8.1.2.6.7. Abduction of nuns at Kissy Mental Home

1557. At Kissy Mental Home, the rebels seized approximately five nuns and threatened them with execution in retribution for the escape of Archbishop Ganda and others who had been held by rebels and whom the rebels suspected would divulge information about their activities.[2957]

8.1.2.7. Allan Town, Calaba Town and Benguema

8.1.2.7.1. 'Forced Marriage' of TF1-023

1558. On 22 January 1999, an afternoon attack on Wellington forced TF1-023 to flee to Calaba Town where she was captured with another six unarmed civilians by a group of

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[2950] Transcript of 28 November 2005, TF1-097, pp. 85-86.
[2951] Transcript of 28 November 2005, TF1-097, pp. 86-88.
[2952] Transcript of 28 November 2005, TF1-097, p. 89.
[2953] Transcript of 28 November 2005, TF1-097, pp. 91-92
[2954] Transcript of 28 November 2005, TF1-097, p. 94.
[2955] Transcript of 28 November 2005, TF1-097, pp. 94-96.
[2956] Transcript of 28 November 2005, TF1-097, pp. 96-100.
[2957] Transcript of 18 October 2004, George Johnson, pp 68-76; Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 96-97. *See also infra* para. 1563.

approximately 200 armed rebels.[2958] TF1-023 and the others were taken to Allen Town where they were told that the rebels intended to use them as human shields, but that no harm would come to them.[2959] At Allen Town, the witness saw 300 to 400 rebels armed with guns, daggers and machetes as well as approximately 100 other captured civilians.[2960] The captured civilians were guarded by four SBUs.[2961]

1559. TF1-023 remained in Allen Town for three days. On one occasion, TF1-023 was forced to watch as the rebels captured a boy named Samuel, whom they suspected of being a Kamajor, and severed both his hands and cut out his tongue.[2962] The rebels then placed a bag over his shoulders with a written message for the ECOMOG that the rebels "were around and would be back".[2963] TF1-023 testified to being terrified by this incident.[2964]

1560. After Allen Town, TF1-023 was taken together with her cousin to Calaba Town for three days by a named AFRC fighter.[2965] Her cousin stayed with that fighter and TF1-023 was handed over to an AFRC Commander as a 'wife'.[2966] TF1-023 did not consent, but accepted the role because "they had the say."[2967] That night she was forced to strip and to have sexual intercourse with her 'husband'.[2968] As his 'wife' she continued to be forced to have sexual intercourse with the AFRC Commander, although it was against her will.[2969]

1561. At some point in February 1999, the AFRC troops moved to Newton/Four Mile and TF1-023 had to follow her 'husband'. At Four Mile she was expected to cook, as well as to continue sexual relations with her 'husband'.[2970] TF1-023 was unable to escape from Four Mile as, on the orders of her 'husband,' she was continuously shadowed by armed guard.[2971]

[2958] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 30-31
[2959] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 31-33.
[2960] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 33-34.
[2961] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 33-35.
[2962] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, p. 36.
[2963] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 36-37.
[2964] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, p. 37.
[2965] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 37-43; Exhibit 59 D, Name of rebel written by the witness, p. 16872.
[2966] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 44-46.
[2967] Exhibit 59 A, Transcript from AFRC Trial, Transcript of 9 March 2005, TF1-023, p. 46; Exhibit 59B, Transcript from AFRC Trial, Transcript of 10 March 2005, TF1-023, p. 24.
[2968] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 46-47.
[2969] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, p. 47.
[2970] Exhibit 59 A, Transcript from AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 49-52.
[2971] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 52-54.

Approximately 400 fighters were stationed at Four Mile and any civilians who attempted to escape were punished with beatings.[2972] TF1-023 knew of ten other women who were forced into 'marriages' with the troops at Four Mile Base to officers and soldiers."[2973] TF1-023 was only able to escape from the troops in August 1999.[2974]

8.1.2.7.2. 'Forced Marriage' of TF1-029

1562. On 22 January 1999, TF1-029, aged 16 at the time, was abducted in Wellington with 50 other civilians by a group of rebels who identified themselves as SLA (AFRC) and RUF fighters.[2975] The mixed group of rebels included both young children and older fighters. TF1-029 estimated the younger fighters to be between 13 and 16 years of age.[2976] The abducted civilians were forced to march from Wellington to Calaba Town and the AFRC and RUF killed people and torched houses en route.[2977] At Calaba Town, Major Arif took TF1-029 as his wife and she was forced to have sex with him.[2978] TF1-029 testified that "thousands" of women were taken and raped by the AFRC and RUF rebels. She was told that "soldiers who captured civilians had a right to rape them and make them their wives."[2979]

1563. TF1-029 also saw ten nuns who had been abducted and forced to accompany the rebels. One of the nuns was killed in Calaba town by Col. Tito, who also shot two other nuns in their hands.[2980]

1564. After remaining in Calaba Town for about two weeks, the group moved to Benguema where a further 100 civilians were captured.[2981] On the march from Calaba Town to Benguema, the AFRC and RUF killed babies as they did not want their cries to disclose their position.[2982] TF1-029 remained at Benguema until 10 March 1999, during which time she was raped ten times by Major Arif. She learned that other girls were also subjected to rape by the

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[2972] Exhibit 59 A, Transcript from the AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 53.
[2973] Exhibit 59A, Transcript from AFRC Trial, Transcript of 9 March 2005, TF1-023, p. 58.
[2974] Exhibit 59B, Transcript from AFRC Trial, Transcript of 9 March 2005, TF1-023, pp. 24-26.
[2975] Transcript of 28 November 2005, TF1-029, pp. 8-10.
[2976] Transcript of 28 November 2005, TF1-029, p. 13.
[2977] Transcript of 28 November 2005, TF1-029, p. 10.
[2978] Transcript of 28 November 2005, TF1-029, p. 12.
[2979] Transcript of 28 November 2005, TF1-029, pp. 12-13.
[2980] Transcript of 28 November 2005, TF1-029, pp. 10-11. *See also supra* para. 1557.
[2981] Transcript of 28 November 2005, TF1-029, p. 15.
[2982] Transcript of 28 November 2005, TF1-029, p. 15.

rebels and at least one civilian was killed.[2983]

1565. Throughout February 1999, roughly 300 civilians captured from Freetown were held by AFRC rebels at Benguema, Four Mile and Newton.[2984] Most of the young girls were forced to be the 'wives' of various AFRC Commanders and were expected to care for their needs by cooking their food and having sexual relations with them, while abducted young boys were trained to be SBUs.[2985] Male captives were expected to carry out household chores, while those women who had not been taken as 'wives' also cooked.[2986]

8.2. Legal Findings on the Crimes in Freetown

1566. The Prosecution alleges that the AFRC/RUF committed the crimes of unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9), physical violence (Counts 10 to 11), enlistment, conscription and use of children in hostilities (Count 12), enslavement (Count 13) and pillage (Count 14) between 6 January 1999 and 28 February 1999 in locations of the city of Freetown and the Western Area. The Prosecution further alleges that these crimes constitute acts of terrorism and collective punishment (Counts 1 and 2).

1567. The Chamber is satisfied that each of the acts described in the paragraphs hereafter was committed intentionally by the perpetrators. The Chamber also recalls its finding that the Prosecution has proved beyond reasonable doubt that an armed conflict existed and that there was a widespread or systematic attack against the civilian population of Sierra Leone at the time.[2987] Unless otherwise stated below, the Chamber finds that the perpetrators' acts formed part of the widespread or systematic attack against the civilian population, and that the perpetrators were aware of this. In addition, unless otherwise stated, the Chamber is satisfied that a nexus existed between these acts and the armed conflict and that the perpetrators knew that the victims were not taking a direct part in hostilities.

[2983] Transcript of 28 November 2005, TF1-029, pp. 15-16.
[2984] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 115-119; Exhibit 119, Transcript from AFRC Trial, Transcript of 15 June 2005, TF1-334, p. 13.
[2985] Exhibit 119, Transcript from AFRC Trial, Transcript of 14 June 2005, TF1-334, pp. 121-122; Exhibit 119, Transcript from AFRC Trial, Transcript of 15 June 2005, TF1-334, p. 14.
[2986] Exhibit 119, Transcript from AFRC Trial, Transcript of 15 June 2005, TF1-334, p. 14.
[2987] *Supra* paras 962-963.

8.2.1. Unlawful Killings (Counts 3 to 5)

1568. The Prosecution alleges that between 6 January 1999 and 28 February 1999, members of the AFRC/RUF committed "large-scale unlawful killings of men, women, and children at locations throughout [Freetown] and the Western Area, including Kissy, Wellington, and Calaba Town."[2988]

1569. The Chamber has found that during the attack on Freetown:

(i) rebels that identified themselves as SLA killed seven relatives of TF1-235 in the early hours of 6 January 1999 at Wellington;[2989]

(ii) rebels that identified themselves as "Junta...people's army" killed 71 people in and around the Rogbalan Mosque at Kissy on 6 January 1999;[2990]

(iii) TF1-021's child was killed when rebels set his house on fire;[2991]

(iv) TF1-093's brother was shot and killed by rebels;[2992]

(v) more than 20 civilians were killed by rebels under the command of TF1-093;[2993]

(vi) seven civilians were executed by an AFRC Commander in the presence of TF1-334;[2994]

(vii) two civilians died at a clinic in Kissy from gunshot wounds inflicted by rebels;[2995]

(viii) a civilian died at a clinic in Wellington from wounds inflicted by rebels;[2996]

(ix) rebel fighters captured and killed the husband of TF1-331 and a six year-old child at Loko Town;[2997]

[2988] Indictment, para. 52.
[2989] *See supra* paras 1531-1535. The Chamber notes the similarity between the testimony of TF1-235 and TF1-104, who encountered a patient at the clinic in Kissy whose family of seven had been killed during the attack on Freetown: *supra* para. 1542. Noting the possibility that the killings may be one and the same, the Chamber has exercised caution and has not made a separate finding in relation to the evidence of TF1-104.
[2990] *Supra* paras 1527, 1550-1553.
[2991] *Supra* para. 1552.
[2992] *Supra* para. 1528.
[2993] *Supra* para. 1529.
[2994] *Supra* para. 1525.
[2995] *Supra* para. 1542.
[2996] *Supra* para. 1538.
[2997] *Supra* para. 1536.

(x) rebels killed the pregnant sister of TF1-331;[2998]

(xi) rebels stabbed one man and shot another at a checkpoint near Kissy;[2999]

(xii) TF1-101 witnessed the shooting of three people in Kissy;[3000]

(xiii) seven armed rebels killed 13 civilians with guns and an axe on 19 January 1999;[3001]

(xiv) a man was shot and killed by uniformed rebels at a clinic in Kissy on 15 January 1999;[3002]

(xv) on 18 January 1999 a Nigerian man and another 15 civilians that were receiving treatment in a clinic in Kissy were shot and killed by a group of soldiers;[3003]

(xvi) TF1-022's brother-in-law and one other civilian were shot and killed by rebels on 22 January 1999 in Kissy;[3004]

(xvii) an unknown number of civilians,[3005] including babies,[3006] were killed by rebels retreating from Wellington to Calaba Town to Benguema; and

(xviii) at least one nun was killed in Calaba Town during the retreat from Freetown by Colonel CO Tito.[3007]

1570. The Chamber is satisfied that these victims were civilians and accordingly finds that these acts constitutes unlawful killings as charged in Counts 4 and 5 of the Indictment.

1571. The Chamber recalls the testimony of TF1-104 that he witnessed the bodies of a police officer and a civilian outside the Kissy Police Station on 6 January 1999.[3008] The Chamber recalls its position that police officers are protected persons for so long as they do not directly participate in hostilities.[3009] The Chamber is satisfied from the evidence that rebel forces deliberately targeted police stations and police officers as perceived collaborators and that the

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[2998] *Supra* para. 1537.
[2999] *Supra* para. 1546.
[3000] *Supra* para. 1547.
[3001] *Supra* para. 1548.
[3002] *Supra* para. 1543.
[3003] *Supra* para. 1544.
[3004] *Supra* paras 1553-1554.
[3005] *Supra* para. 1562.
[3006] *Supra* para. 1564.
[3007] *Supra* paras 1557, 1563.
[3008] *Supra* para. 1541.
[3009] *Supra* para. 102.

police officer was not participating in hostilities at the time.[3010] The Chamber accordingly finds that these acts constitute unlawful killings as charged in Counts 4 and 5 of the Indictment.

1572. The Chamber further finds that civilians were killed by rebels on a massive scale in Freetown and the Western Area between 6 January and 28 February 1999. These killings were committed as a direct consequence of orders, such as the policy of *gori-gori* announced at State House, which called for the deliberate targeting of civilians.[3011]

1573. The Chamber is satisfied, from the systematic manner in which civilians were captured and killed in groups; the targeting of civilians in homes, mosques and hospitals; and the short time frame in which countless civilians were executed in numerous proximate locations establishes that the perpetrators intended to kill on a massive scale. We therefore find that these events constitute extermination as charged in Count 3 of the Indictment.

8.2.2. Sexual Violence (Counts 6 to 9)

1574. The Prosecution alleges that "between 6 January and 28 February 1999, members of the 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 sexual slaves and/or forced them into 'marriages' and/or subjected them to other forms of sexual violence. The 'wives' were forced to perform a number of conjugal duties under coercion by their 'husbands'."[3012]

8.2.2.1. Rape (Count 6)

1575. The Chamber recalls the expert evidence of TF1-081 that as many as 648 of the 1,168 patients treated after the attack on Freetown were raped.[3013] The Chamber is satisfied that the vast majority of these rapes were committed by the rebel forces and considers that this evidence further corroborates our specific findings of rape.

1576. The Chamber recalls its findings that:

[3010] Exhibit 119, Transcript from AFRC Trial, Transcript of 13 June 2005, TF1-334, pp. 101, 109
[3011] *Supra* para. 1517.
[3012] Indictment, para. 59.
[3013] *Supra* para. 1520.

(i) an unknown number of women were raped at State House;[3014]

(ii) a large number of civilians under the control of witness TF1-093 were raped;[3015]

(iii) an unknown number of women at Benguema and Calaba Town were raped by AFRC rebels throughout February 1999;[3016] and

(iv) an unknown number of women were raped in Kissy.[3017]

1577. The Chamber is satisfied that the use of the term "rape" by credible witnesses describes acts of forced sexual penetration consistent with the *actus reus* of the offence of rape.[3018] The Chamber observes that an atmosphere of extreme violence prevailed during the attack on the Freetown peninsula, noting the lootings, burnings, amputations and killings that occurred simultaneously. The Chamber finds that in such circumstances the individuals who were forced to have intercourse were incapable of genuine consent.[3019] The Chamber is satisfied that the perpetrators of each of these acts knew or had reason to know that the victims did not consent.

1578. The Chamber accordingly finds that these acts constitute rape as charged under Count 6 of the Indictment.

8.2.2.2. Sexual Slavery and 'Forced Marriage' (Counts 7 and 8)

1579. The Chamber recalls its findings that:

(i) rebels abducted a 10 year-old girl and, in the presence of TF1-022, gave the girl to one rebel to be his 'wife;'[3020]

(ii) TF1-023 and ten other women were given as 'wives' to AFRC Commanders and fighters, with TF1-023 being forced to have sexual intercourse with her 'husband' on multiple occasions; and[3021]

(iii) TF1-029 was forced into a 'marriage' with Major Arif and forced to have

[3014] *Supra* para. 1528.
[3015] *Supra* para. 1529.
[3016] *Supra* paras 1562, 1564.
[3017] *Supra* para. 1556.
[3018] *Supra* para. 1285.
[3019] *Supra* para. 148.
[3020] *Supra* para. 1553.
[3021] *Supra* paras 1560-1561.

sexual relations with him.[3022]

1580. The Chamber further finds, recalling the testimony of TF1-334 that the practice of taking women, including young girls, to become the 'wives' of various Commanders and to perform sexual acts and domestic chores for their 'husbands' was widespread,[3023] that an unknown number of other women were forced into 'marriages' in Freetown and the Western Area.

1581. The Chamber is satisfied that rebels forced a conjugal relationship on these 'wives' in an atmosphere of extreme violence and terror. From the foregoing the Chamber concludes that the perpetrators had knowledge that the women did not consent. These women were abducted and deprived of their liberty and coerced to perform sexual duties and domestic chores for their 'husbands'. The perpetrators controlled their movement and prohibited their escape on fear of death. On the basis of these indicia, the Chamber finds that the perpetrators exercised powers attaching to the right of ownership over these women.

1582. The Chamber therefore finds that these acts constitute sexual slavery and 'forced marriages,' as charged under Counts 7 and 8 of the Indictment.

8.2.2.3. Outrages against personal dignity (Count 9)

1583. The Chamber finds that these crimes of rape, sexual slavery and 'forced marriage' constitute in each case a severe humiliation, degradation and violation of the dignity of the victims and the perpetrators knew that their acts would have this effect.[3024] The Chamber accordingly finds that AFRC rebels committed outrages on personal dignity in respect of an unknown number of civilians in Freetown and the Western Area between 6 January 1999 and 28 February 1999. These acts constitute the crime thas charged in Count 9 of the Indictment.

8.2.3. Physical Violence (Counts 10 and 11)

1584. The Prosecution alleges that "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

[3022] *Supra* para. 1562.
[3023] *Supra* paras 1523, 1565.
[3024] *Supra* paras 1575-1582.

Town. The mutilation included cutting off limbs."[3025]

1585. The Chamber recalls its findings that:

(i) rebels severed the hand of TF1-331 at Loko Town;[3026]

(ii) a rebel named Commando severed both hands of TF1-101 on 19 January 1999;[3027]

(iii) three young RUF rebels, on 22 January 1999, amputated the hand of TF1-022 and another civilian;[3028]

(iv) rebels amputated both arms and severed the tongue of a boy named Samuel whom they suspected of being a Kamajor;[3029] and

(v) on 21 January 1999, Captain Blood amputated TF1-097's hand and both hands of one of the witness's relatives.[3030]

1586. The Chamber is satisfied that these victims were civilians and finds that none of these acts were justified by medical, dental or hospital treatment of the persons concerned. The Chamber notes that these acts resulted in the permanent disfigurement and disabling of the victims, and therefore constitutes mutilation.

1587. The Chamber accordingly finds it established beyond reasonable doubt that these amputations constitute mutilation and inhumane acts, as charged under Counts 10 and 11 of the Indictment.

8.2.4. Abductions and Forced Labour (Count 13)

1588. The Prosecution alleges that "between 6 January 1999 and 28 February 1999, in particular as the AFRC were being driven out of Freetown and the Western Area, members of the AFRC abducted hundreds of civilians, including a large number of children, from various areas of Freetown and the Western Area, including Peacock Farm, Kissy and Calaba Town. These abducted civilians were used for forced labour."[3031] The Chamber recalls its finding in

[3025] Indictment, para. 66.
[3026] *Supra* para. 1537.
[3027] *Supra* para. 1548.
[3028] *Supra* para. 1554.
[3029] *Supra* para. 1559.
[3030] *Supra* para. 1556.
[3031] Indictment, para. 75.

the Rule 98 Decision that the Prosecution did not adduce any evidence on the location of Peacock Farm.[3032]

1589. The Chamber recalls the evidence presented by TF1-334, TF1-022 and witness George Johnson regarding the policy of abducting civilians, particularly "young girls, young children" during the attack and retreat from Freetown.[3033] The Chamber also takes particular note of the expert testimony of TF1-296 regarding the rehabilitation of 90 children abducted during the Freetown attack, and that of TF1-081 who reported that 99% of the 1,168 patients he saw had been abducted, the "vast majority" from Freetown after the 6 January 1999 attack.[3034]

1590. The Chamber recalls the evidence of TF1-022 who on 22 January 1999 saw the rebels take with them many children and women.[3035] The Chamber has found that on 22 January 1999, TF1-023 and approximately 100 other civilians were abducted by rebels who sought to use them as human shields and restricted the civilians' movements.[3036] The Chamber has further found that TF1-029 and approximately 50 other civilians were abducted on 22 January 1999 by AFRC fighters and taken to Calaba Town for two weeks before being taken to Benguema, at which time the fighters abducted another 100 civilians.[3037] We have found that at least 300 civilians were taken to Benguema and ordered to carry looted items and perform household chores.[3038]

1591. The Chamber finds that through the abduction of civilians and their use as human shields, porters to carry looted items and captives to perform domestic chores, the rebels deprived the civilians of their liberty and exercised powers attaching to the right of ownership over them. The Chamber therefore finds that the AFRC forces enslaved hundreds of civilians in Freetown and the Western Area, and these acts constitute enslavement as charged under Count 13 of the Indictment.

[3032] RUF Oral Rule 98 Decision, Transcript of 25 October 2006, p. 44.
[3033] *Supra* para. 1519.
[3034] *Supra* para. 1520.
[3035] *Supra* para. 1554.
[3036] *Supra* para. 1558.
[3037] *Supra* paras 1562, 1564.
[3038] *Supra* para. 1565.

8.2.5. Pillage (Count 14)

1592. The Prosecution alleges that "between 6 January 1999 and 28 February 1999, AFRC/RUF forces engaged in widespread looting and burning throughout Freetown and the Western Area."[3039] The Chamber recalls that the burning of property does not satisfy the essential elements of pillage.[3040] Therefore, the Chamber will only examine the evidence relating to the underlying acts of looting as they relate to the crime of pillage.

1593. Although proof of pillage under international law does not require the items appropriated to be of significant value, we recall that the jurisdiction of the Court can only be exercised in respect of serious violations. We are of the opinion that to determine the seriousness of the violence reference can be made to the nature, scope, dimension, or the collective scale of the looting, for instance by considering the number of people from whom property is appropriated.[3041] The Chamber finds that the looting throughout Freetown and the Western Area was so widespread that these violations are sufficiently serious to enliven the Court's jurisdiction.

1594. The Chamber has found that:

(i) rebels appropriated Le 200.000, Le 9.000 and a wrist watch from TF1-235 on 6 January 1999;[3042]

(ii) on 6 January 1999 armed rebels appropriated Le 80.000 from TF1-021 at the Rogbalan Mosque in Kissy;[3043]

(iii) on 10 January 1999 rebels entered a clinic in Wellington and appropriated over
Le 300.000, a 50kg bag of rice, jewellery, food and medical and other supplies;[3044]

(iv) rebels looted property of an undisclosed nature from the house in which TF1-235 was hiding after 10 January 1999;[3045]

(v) on 22 February 1999 a group of rebels attacked the house of TF1-235 and

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[3039] Indictment, para. 82.
[3040] *Supra* para. 212.
[3041] *Supra* paras 209-210.
[3042] *Supra* paras 1533, 1535.
[3043] *Supra* para. 1550.
[3044] *Supra* para. 1538.
[3045] *Supra* para. 1539.

took money and property from those hiding there;[3046]

(vi) on about 13 January 1999 armed rebels appropriated Le 50.000 from TF1-331;[3047]

(vii) on about 20 January 1999 rebels accused TF1-104 of being a soldier and appropriated money from him;[3048] and

(viii) rebels near Connaught Hospital in Kissy forced TF1-022 to undress and appropriated Le 5.000 from him.[3049]

1595. Noting the prevailing environment of violence and chaos, the Chamber finds that the victims did not consent to the appropriation of their property. Consequently, the Chamber finds that these acts constitute pillage as charged under Count 14 of the Indictment.

8.2.6. Acts of Terrorism (Count 1)

1596. The Prosecution alleges that between 6 January and 28 February 1999, members of the AFRC/RUF committed the crimes described above, specifically unlawful killings, sexual violence, amputations, abductions, burning and looting "as part of a campaign to terrorise the civilian population."[3050]

1597. The Chamber has found that the infliction of violence on civilians was a primary objective of the attacking fighters in Freetown and the Western Area.[3051] The Chamber further finds that it has been established beyond reasonable doubt that AFRC Commanders including Gullit, Bazzy, and Five-Five ordered the targeting of civilians and destruction of property for the purpose of intimidating the population, seeking international publicity and spreading terror. Such policies instilled in the rebel fighters a sense of revenge against the civilian population, ECOMOG forces and the Kabbah Government that led directly to widespread violence, chaos and terror during the attack on Freetown. In particular, we take note of the policy of *gori-gori*, which involved the killing of civilians, the amputation of limbs and the destruction of government property.[3052]

[3046] *Supra* para. 1540.
[3047] *Supra* para. 1537.
[3048] *Supra* para. 1545.
[3049] *Supra* para. 1553.
[3050] Indictment, para. 44.
[3051] *Supra* paras 1516-1522.
[3052] *Supra* para. 1517.

1598. The Chamber is satisfied that the AFRC fighters executed this policy that promoted violence, targeted civilians and spread terror among the civilian population. In this respect, we recall in particular the following evidence:

(i) an AFRC Commander admitted that he was following orders after he burned down the house of a witness;[3053]

(ii) rebels threatened to douse with petrol and burn the clinic in Wellington in which the civilians were hiding and receiving treatment, before proceeding to loot the clinic;[3054]

(iii) rebels who found civilians in hiding said that this was their "last day of grace" as they would come back the next day to chop off their arms and send their arms to Tejan Kabbah, before they proceeded to loot the house the civilians were in;[3055]

(iv) rebels cleaved a child in two with a machete as "a sacrifice for peace" and then told the civilians present to "go to Tejan Kabbah and tell him that [the rebels] want peace;"[3056]

(v) rebels threatened to kill a civilian woman after beating her and amputating her hand, accusing her of being the "Mother of Kabbah;"[3057]

(vi) two men were murdered in Kissy, under the guise of a "sacrifice" in public in front of civilians who were then left to go home;[3058]

(vii) civilians were used as 'human shields' by rebels in Wellington;[3059]

(viii) rebels severed both arms and the tongue of a young boy named Samuel and placed a bag on the boy with a message to ECOMOG that they "were around and would be back;"[3060] and

(ix) rebels amputated the hands of civilians and told them to go and see Tejan Kabbah so that he would give them back their hands.[3061]

1599. The Chamber also notes that many witnesses attempted to hide from the rebels in the bushes, or in cellars, or in neighbour's houses. We find that these are the actions of a civilian

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[3053] *Supra* para. 1525.
[3054] *Supra* para. 1538.
[3055] *Supra* para. 1539.
[3056] *Supra* para. 1536.
[3057] *Supra* para. 1537.
[3058] *Supra* para. 1546.
[3059] *Supra* para. 1558.
[3060] *Supra* para. 1559.
[3061] *Supra* para. 1556.

population in terror, a consequence of the practice of the AFRC rebels to spread fear within the civilian population.

1600. The Chamber takes cognizance of the indiscriminate nature and terrifying effect of the amputations during this particular episode in the Sierra Leone conflict. The Chamber finds from the evidence adduced, in particular the testimony of TF1-093 and TF1-334, that amputations were carried out on a massive scale and following orders from AFRC Commanders including Five-Five to target civilians.[3062]

1601. Similarly, the Chamber recalls the repeated claims by witnesses of burnt properties and houses, including those where TF1-235, TF1-104 and TF1-097 were hiding.[3063] We recall the expert evidence that 85% of the buildings in eastern Freetown were burned.[3064] We find, notwithstanding that damage may be expected in armed conflict, that such widespread, systematic and indiscriminate burning of civilian property was committed with the specific intent of spreading terror among the civilian population. We find that such acts of burning of property constitute acts of terrorism as charged under Count 1 of the Indictment.

1602. The Chamber also considers the testimony of TF1-029 regarding the claim of rebels that "soldiers who captured civilians had a right to rape them and make them their wives."[3065] Coupled with our findings in relation to Count 6 above, the Chamber finds that the widespread and systematic rape of women instilled fear and a sense of insecurity among the civilian population. The deliberate and concerted campaign to rape women constitutes an extension of the battlefield to the women's bodies, a degrading treatment that inflicts physical, mental and sexual suffering to the victims and to their community. We find that widespread and systematic sexual violence, including rape, constitutes an act of terrorism as charged under Count 1 of the Indictment.

1603. The Chamber accordingly finds that the perpetrators of the crimes committed in Freetown acted with the intent to spread terror among the civilian population.

1604. For the foregoing reasons, the Chamber finds that the unlawful killings, sexual

[3062] *Supra* paras 1519, 1521.
[3063] *Supra* paras 1540, 1545, 1556.
[3064] *Supra* para. 1518.

violence, physical violence, abductions, forced labour, threats, looting and burning described above constitute acts of terrorism as charged in Count 1 of the Indictment.

8.2.7. Collective Punishments (Count 2)

1605. The Prosecution alleges that between 6 January and 28 February 1999, members of the AFRC/RUF committed the crimes described above, specifically unlawful killings, sexual violence, amputations, abductions, burning and looting "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."[3066]

1606. In addition to the evidence of orders aimed at terrorising the civilian population described in paragraph 1597 above, the Chamber also recalls the orders given by AFRC Commanders to burn Fourah Bay upon hearing that a fighter had been killed there, and the order to kill any person in a mosque after receiving reports that ECOMOG troops were hiding among civilians in a mosque in Kissy.[3067] The Chamber has found that these orders were implemented.[3068] Moreover, the Chamber recalls that:

(i) rebels accused TF1-235 and his family of being supporters of Tejan Kabbah and stated that for this they should be taught a lesson and killed, before proceeding to shoot them, killing seven and injuring three;[3069]

(ii) rebels threatened civilians at Rogbalan Mosque in Kissy that "We're not going to leave any soul around here to vote for this government, for Tejan Kabbah" and claimed that Kabbah refused to make peace with the rebels, indiscriminately shooting at the congregation and killing 71 civilians;[3070]

(iii) rebels severed both arms and the tongue of a young boy named Samuel and placed a bag on the boy with a message to ECOMOG that they "were around and would be back;"[3071] and

(iv) 13 civilians were publicly executed by a rebel named Commando because two of the civilians had disobeyed him and refused to put their hands on a log for

[3065] *Supra* para. 1562.
[3066] Indictment, para. 44.
[3067] *Supra* paras 1526-1527.
[3068] *Supra* paras 1526, 1550-1552.
[3069] *Supra* para. 1534.
[3070] *Supra* paras 1550-1552.
[3071] *Supra* para. 1559.

amputation.[3072]

1607. The Chamber also finds that many witnesses testified about the mock practice of the rebels of sending the severed limbs of victims to President Tejan Kabbah; of the "choice" forced on civilians between 'short' and 'long' sleeves, referring to amputations at the elbow or at the wrist; and of the so-called "one love" amputation involving the chopping off of all fingers except the thumb.[3073]

1608. The Chamber is satisfied that the amputations and killings in Freetown were committed as part of a pattern of punishments indiscriminately inflicted on civilians who allegedly supported the elected Government of President Kabbah or provided support to ECOMOG troops and that the perpetrators intended to collectively punish the civilian population. Consequently, the Chamber finds that these acts constitute collective punishments as Charged in Count 2 of the Indictment.

9. Crimes in Port Loko District

1609. The Prosecution alleges that AFRC/RUF forces engaged in numerous crimes at multiple locations in Port Loko Districts during the Indictment period. The Chamber heard evidence that AFRC forces committed crimes against civilians, including unlawful killings, sexual violence, physical violence, enslavement and looting in multiple locations in Port Loko including Nonkoba, Makambisa, Manaarma, Port Loko, and Chendekum.

1610. Following the 6 January 1999 invasion of Freetown, the AFRC faction in Port Loko, known as the West Side Boys, refused to cooperate with the RUF and opposed the disarmament programme.[3074] The Chamber finds that Gullit and other members of the West Side Boys later assisted Superman in attacking Sesay in Makeni in March 1999; following this attack, Superman was based in Makeni.[3075] This attack resulted in Bockarie declaring Superman an enemy of the RUF and ceasing communication with him.[3076]

[3072] *Supra* para. 1548.
[3073] *Supra* para. 1521.
[3074] Transcript of 14 January 2008, Abu Bakar Mustapha, p. 44.
[3075] Transcript of 18 October 2004, George Johnson. p. 80; Transcript of 22 May 2007, Issa Sesay, pp. 15, 51, 67 (CS); Transcript of 6 July 2008, TF1-334, pp. 51, 55 (CS).
[3076] Transcript of 5 December 2005, TF1-184, pp 22-23; Transcript of 22 May 2007, Issa Sesay, p. 59.

1611. The Chamber finds that the attacks against the civilian population in Port Loko District during the Indictment period were carried out by the West Side Boys, who were led by Bazzy after the attack on Sesay in Makeni.[3077] The West Side Boys were based in the Okra Hills area.[3078] The Chamber finds that Bazzy did not take orders from anyone else at this time.[3079] We are satisfied that the participation of Gullit and other AFRC troops in the attack on Sesay, in conjunction with Bazzy's refusal to cooperate with other RUF or AFRC factions, is sufficient to establish that the AFRC in Port Loko District did not share any common plan or purpose with the RUF, and that the two groups were not participating in a joint criminal enterprise at this time.

1612. The Chamber finds that at the time the attacks in Port Loko took place, none of the three Accused were present in Port Loko District. During this time, the Accused were based at Makeni or Magburaka.[3080] The Chamber is satisfied that the Accused did not order the attacks in Port Loko District and were not able to exercise command and control over the West Side Boys or their leaders.

1613. The Chamber therefore finds that the Accused do not bear criminal responsibility for the actions of the AFRC in Port Loko District under any of the modes of criminal responsibility alleged by the Prosecution.

10. Child Soldiers

10.1. Factual Findings on the Conscription, Enlistment and Use of Child Soldiers

10.1.1. Overview on children within the RUF and AFRC forces

1614. The Chamber heard substantial evidence of a general nature pertaining to children associated with the RUF and AFRC forces throughout the armed conflict in Sierra Leone. We

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[3077] Transcript of 18 October 2004, George Johnson. pp. 80, 83; Transcript of 6 July 2006, TF1-334, p. 55 (CS); Transcript of 18 May 2007, Issa Sesay, p. 101 (CS).
[3078] Exhibit 119, AFRC Transcript of 15 June 2005, TF1-334, p. 31; Transcript of 9 November 2005, TF1-366, p. 43 (CS); Transcript of 18 May 2007, Issa Sesay pp. 100-101 (CS); Transcript of 14 January 2008, DIS-163, p. 43. *See also* Exhibit 8, "Map of George Johnson's Route Before and After the 6 January 1999 Freetown Invasion".
[3079] Transcript of 19 October 2004, George Johnson, p. 79.
[3080] Transcript of 11 July 2005, TF1-361, p. 72 (CS); Transcript of 19 July 2005, TF1-361, p. 67 (CS); Transcript of 21 July 2005, TF1-360, p. 46 (CS); Transcript of 17 January 2008, DIS-214, p. 78 (CS); Transcript of 17 April 2008, Morris Kallon, pp. 7-8.

consider the following evidence to be indicative of the large scale and organised nature of the practice of forcibly recruiting persons under the age of 15 years and using them in hostilities.

10.1.1.1. Importance of child fighters within the RUF

1615. The military training of children by the RUF dates from its inception as an armed movement. Between 1991 and 1992, children between the ages of eight and 15 were trained at Camp Naama in Liberia[3081] and Matru Jong[3082] and Pendembu[3083] in Sierra Leone. Prior to 1996, the RUF also trained children in military techniques at their Headquarters at Camp Zogoda.[3084] Kallon was seen there with child fighters in 1994.[3085] In the Chamber's view, this evidence demonstrates a consistent pattern of conduct by the RUF of recruiting and training children for military purposes that began as early as 1991 and continued throughout the Indictment period.

1616. Children were of great importance to the RUF organisation. As the RUF had no formal means of recruitment, it relied heavily on abducted children to increase the number of fighters within the RUF. Young boys were of particular value to the RUF due to their loyalty to the movement and their ability to effectively conduct espionage activities,[3086] as their small size and agility made them particularly suitable for hazardous assignments.[3087] The younger children were particularly aggressive when armed and were known to kill human beings as if they were nothing more than "chickens."[3088]

10.1.1.2. Pattern of Abductions, Training and Use

1617. Throughout the armed conflict in Sierra Leone, the RUF and AFRC/RUF forces engaged in abduction campaigns in which thousands of children of varying ages were forcibly separated from their families. Multiple witnesses testified to this general practice of abduction

[3081] Transcript of 3 May 2007, Issa Sesay, p. 78; Transcript of 25 October 2007, DIS-069, p. 16; Transcript of DMK-048, 5 June 2008, p. 25.
[3082] Transcript of 20 April 2005, TF1-362, p. 26 (CS).
[3083] Transcript of 24 May 2007, Issa Sesay, pp. 9-12.
[3084] Transcript of 28 July 2005, TF1-036, p. 15-16 (CS).
[3085] Transcript of 21 November 2005, TF1-045, p. 39.
[3086] Transcript of 3 March 2008, DIS-018, pp. 70-71.
[3087] Exhibit 177, Sierra Leone: Childhood-a casualty of conflict, 31 August 2000, p. 19542.
[3088] Transcript of 29 November 2005, TF1-093, p. 95 (CS).

as well as to specific incidents of children being seized by the RUF or AFRC.[3089] A substantial percentage of AFRC/RUF fighters were young recruits.[3090] Many abducted children were as young as ten years old, and some were even younger.[3091]

1618. Following their abduction, children were screened to ascertain their suitability for combat operations.[3092] Children who were deemed unfit for combat were obliged to undertake tasks of logistical importance to the AFRC/RUF forces, such as cooking, conducting food foraging missions and carrying loads including weapons, looted property and food.[3093]

1619. Those children that were identified as capable of fighting were sent for military training. Many children perished during the training or were killed for attempting to escape or for refusing to carry out orders.[3094] Although the duration and nature of the military training was not always consistent,[3095] the training generally comprised instruction in the use of weapons, the conduct of ambushes and the tactics of advancing on and attacking enemy positions.[3096] Some children, however, only received "immediate training" where they learned "to cock and shoot."[3097]

1620. Children who participated in combat were therefore trained for that specific purpose.[3098] However, children were also assigned functions including gathering information from civilians and opposition camps[3099] and acting as bodyguards for higher-ranking Commanders.[3100] In addition to combat-related activities, the children were also expected to

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[3089] Transcript of 19 January 2005, TF1-071, p. 31; Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 4-5. Transcript of 7 April 2005, TF1-263, p. 49; Transcript of 11 April 2005, TF1-141, p. 79; Transcript of 14 June 2005, TF1-334, p. 116.
[3090] Exhibit 163, UNOMSIL Human Rights Situation Report and Preliminary Technical Assistance Needs Assessment, 19 July 1998, p. 19186.
[3091] Transcript of 12 July 2005, TF1-361, p. 69 (CS).
[3092] Transcript of 12 April 2005, TF1-141, pp. 25-26.
[3093] Transcript of 2 March 2006, TF1-113, p. 68; Transcript of 28 July 2005, TF1-036, p. 17 (CS); Transcript of 2 March 2006, TF1-113, p. 69; Transcript of 2 November 2005, TF1-314, pp. 31-36; Exhibit 176, Sierra Leone 1998-a year of atrocities against civilians, 1 November 1998, p. 1950426; Exhibit 163, UNOMSIL Human Rights Situation Report and Preliminary Technical Assistance Needs Assessment, 19 July 1998, p. 1950426.
[3094] Transcript of 12 April 2005, TF1-141, pp. 25-26.
[3095] Transcript of 12 July 2006, TF1-296, p. 20 (CS).
[3096] Exhibit 177, Sierra Leone: Childhood-a casualty of conflict, 31 August 2000, p. 19542; Transcript of 21 March 2006, TF1-174, p. 29 (CS); Transcript of 20 March 2006, TF1-174, pp. 95-96 (CS).
[3097] Transcript of 21 March 2006, TF1-174, p. 44 (CS).
[3098] Transcript of 21 March 2006, TF1-174, p. 36 (CS).
[3099] Transcript of 21 March 2006, TF1-174, p. 32 (CS).
[3100] Transcript of 20 July 2004, TF1-199, pp. 27-28.

cook, undertake laundry duties, fetch water and carry goods including looted property and food for the forces.[3101]

1621. On completion of their military training, the young boys were assigned into units known as Small Boys Units ("SBUs").[3102] TF1-199, himself a child soldier, indicated that SBU was the name that the RUF "gave really small boys" and that the rebels told the children "you're small rebel, that's why we should call you an SBU."[3103] Children from 8 to 15 years of age were assigned by the RUF into SBUs.[3104] The Chamber notes that witnesses commonly used the term "SBU" to refer to the individual fighter as well as the organisational unit and we have adopted this usage throughout our findings. We observe that the existence of a specific combat unit for child fighters, as well as the fact that its title entered into common parlance in Sierra Leone, further demonstrates the entrenched and institutionalised nature of the practice of recruitment and use of child soldiers.

1622. Abducted female children, including girls of less than 15 years of age were forced into sexual partnerships with fighters. Those who resisted were liable to physical or sexual abuse or execution.[3105] Small Girls Units ("SGUs"), similar to the SBUs, also existed and their members underwent training.[3106] On completion of their training, these young girls typically remained with the Commanders or their wives, undertaking cleaning, laundry and kitchen duties. [3107]

1623. The RUF habitually gave alcohol or drugs such as marijuana, amphetamines, and cocaine to child fighters before and during combat operations.[3108] The children testified that after ingesting the drugs, particularly cocaine, they felt no fear and they "became bloody."[3109] The children's legs would sometimes be "cut with blades [so] cocaine [could be] rubbed in the wounds," which made them feel "like a big person" and see other people "like chickens and

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[3101] Transcript of 21 March 2006, TF1-174, p. 32 (CS); Exhibit 176, Sierra Leone 1998–a year of atrocities against civilians, 1 November 1998, p. 19402.
[3102] Transcript of 12 July 2006, TF1-296, p. 18 (CS); Transcript of 20 July 2004, TF1-199, p. 37.
[3103] Transcript of 20 July 2004, TF1-199, p. 37.
[3104] Transcript of 21 July 2006, TF1-371, p. 63 (CS); Transcript of 28 July 2005, TF1-036, p. 15 (CS).
[3105] Exhibit 176, Sierra Leone 1998–a year of atrocities against civilians, 1 November 1998, pp. 25-26. p. 19504.
[3106] Transcript of 22 April 2005, TF1-362, p. 7 (CS); Transcript of 28 July 2005, TF1-036, pp. 15-16 (CS); Transcript of 12 April 2005, TF1-141, pp. 26–27; Transcript of 22 April 2005, TF1-362, p. 19 (CS).
[3107] Transcript of 2 March 2006, TF1-113, p. 68; TF1-362, Transcript 22 April 2005, Closed Session, p. 26.
[3108] Exhibit 177, Sierra Leone: Childhood–a casualty of conflict, 31 August 2000, p. 7; Exhibit 176, Sierra Leone 1998 –a year of atrocities against civilians, 1 November 1998, p. 27; Transcript of 29 November 2005, TF1-093, p. 95 (CS).
[3109] Exhibit 177, Sierra Leone: Childhood–a casualty of conflict, 31 August 2000, p. 19543.

rats" that they could kill.[3110] Drugs were often ingested by smoke inhalation or by sniffing;[3111] or mixed into a child's food.[3112] If a child-combatant refused to take drugs he would be "beaten and, in some cases, killed."[3113] TF1-199 and other boys of SBUs were given marijuana by their Commanders before they engaged in an attack in order to help them remain at ease during combat.[3114]

1624. The child fighters who participated in rehabilitation programmes recounted their experiences as part of the RUF. One boy, Abu Fornah, was 11 years of age and identified himself as a fighter for the RUF.[3115] Fornah had the letters "RUF" carved into his chest and he admitted to TF1-174 that he had killed 11 people.[3116] Another boy, aged 14 at the time of his family reunification, told TF1-174 that he wanted to get married because as a member of the RUF for five years he had grown accustomed to regular sexual intercourse as he had raped many women.[3117]

10.1.1.3. Typical ages of child fighters

1625. In 1996, UNICEF established Interim Care Centres (ICCs) in various locations throughout Sierra Leone in order to house former child fighters prior to reunification with their families.[3118] In 1997, the RUF officially handed 340 children over to UNICEF,[3119] 188 of who were determined to have been child soldiers.[3120] About 400 to 450 children surrendered weapons to UNICEF at Teko Barracks in 1997, the majority of whom were between 10 and 15 years old of age.[3121] At this time, the ICC in Makeni received a record number of between 450 and 470 children, all of whom had been with the RUF. The majority of these children were between the ages of 10 and 15.[3122] Following the offensive on Freetown in January 1999, ECOMOG transferred into the care of UNICEF 139 children taken prisoner during and after

[3110] Exhibit 177, Sierra Leone: Childhood–a casualty of conflict, 31 August 2000, p. 19546.
[3111] Exhibit 177, Sierra Leone: Childhood–a casualty of conflict, 31 August 2000, p. 19543.
[3112] Exhibit 177, Sierra Leone: Childhood–a casualty of conflict, 31 August 2000, p. 19546.
[3113] Exhibit 177, Sierra Leone: Childhood–a casualty of conflict, 31 August 2000, p. 19546.
[3114] Transcript of 20 July 2004, TF1-199, p. 28.
[3115] Transcript of 21 March 2006, TF1-174, p. 38 (CS).
[3116] Transcript of 21 March 2006, TF1-174, p. 38 (CS).
[3117] Transcript of 21 March 2006, TF1-174, p. 39 (CS).
[3118] Transcript of 11 July 2006, TF1-296, pp. 81-85 (CS).
[3119] Transcript of 11 July 2006, TF1-296, p. 100 (CS).
[3120] Transcript of 11 July 2006, TF1-296, p. 102 (CS).
[3121] Transcript of 20 March 2006, TF1-174, p. 99 (CS).
[3122] Transcript of 21 March 2006, TF1-174, pp. 43-44 (CS).

the attack.[3123] UNICEF officially reported that, at that point, 773 children had been released from the AFRC/RUF and 139 children had been handed over by ECOMOG.[3124]

1626. Between 1998 and 2002, the majority of the "separated" children (child soldiers, unaccompanied children and children suffering from war-related stress) in ICCs were between the ages of 12 and 16, the mean average being approximately 14 years of age in most Centres.[3125] In 2001, some of the children who came forward stated that they were less then 15 years of age when they were fighters in 1997.[3126]

1627. While the Chamber heard testimony from child fighters who were able to identify their ages at the times of relevant events, we note that several such witnesses estimated the age of other child fighters based on comparisons between their own size and that of the other children. The Chamber also heard evidence from many other witnesses who observed children who appeared to be under the age of 15 engaged in various war-related activities. The Chamber is cognisant that these estimations of age were generally made on the basis of a child's appearance or height, rather than on objective proof of age.

1628. Given the inherent uncertainties in such estimations, the Chamber has exercised caution in determining the ages of children associated with the rebel factions in its findings. We nonetheless note that during the DDR process it was established through the use of verification of age methods such as the physical inspection of teeth that many of the children who had fought with the RUF and AFRC forces were under 15 at that time, which was towards the end of the Indictment period.[3127]

10.1.2. Abductions of Children by the AFRC/RUF forces

1629. In February/March 1998, during the joint AFRC/RUF attack on Koidu Town, TF1-263, then 14 years old, was abducted from school by bodyguards of an STF fighter named Wallace and taken to Kissi Town.[3128] TF1-263 lived in the same compound as Wallace.[3129] At

[3123] Transcript of 11 July 2006, TF1-296, p. 113 (CS).
[3124] Transcript of 12 July 2006, TF1-296, p. 23 (CS).
[3125] Transcript of 12 July 2006, TF1-296, pp. 35-36 (CS).
[3126] Transcript of 11 March 2008, Daniel Opande, pp. 84 - 85.
[3127] Transcript of 11 April 2005, TF1-141, p. 78; Transcript of 11 July 2006, TF1-296, p. 90 (CS); Transcript of 20 March 2006, TF1-174, pp. 99-100 (CS).
[3128] Transcript of 7 April 2005, TF1-263, p. 49.

the time of the abduction Wallace was subordinate to Superman. Subsequently, Wallace became the bodyguard to the STF Commander General Bropleh.[3130]

1630. TF1-141 lived and attended school in Koidu Town and he was abducted during the same attack. TF1-141 was then 12 years of age.[3131] TF1-141 and eight other civilians were captured at Opera Roundabout in Koidu Town.[3132] The adult civilians were killed but the children's lives were spared.[3133] The abductees were detained at Opera Roundabout for 14 to 15 days,[3134] and Kallon, Sesay, Rambo, Colonel Banya and Superman were also present.[3135] The abductees were then handed over to an RUF Commander named Akisto, who took them to Guinea Highway.[3136] TF1-141 only learned of his age during his demobilisation in 2000, [3137] when a nurse counted his teeth and determined he was 14 years old.[3138]

1631. In March 1998, after Johnny Paul Koroma declared Kono a "no go area," AFRC and RUF soldiers abducted civilians from Tombodu, Yomadu and other surrounding villages in Koidu. Among the civilians were children aged between 8 and 12 years of age and men who were forced to carry food for the troops or who were subsequently trained to join the movement.[3139]

1632. Many of those children abducted from Kono District in 1998, including male and female children between 10 and 15 years of age, were organised into SBUs or SGUs. The children were given weapons to carry in readiness for combat and were trained to act as spies

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[3129] Transcript of 7 April 2005, TF1-263, p. 50-53.
[3130] Transcript of 7 April 2005, TF1-263, pp. 49-51.
[3131] Transcript of 11 April 2005, TF1-141, p. 79. TF1-141 testified via closed circuit television upon the advice from An Michels, a psychologist from the Victims and Witnesses Unit, Special Court for Sierra Leone. An Michels' declaration is Exhibit 15, Declaration of An Michels on TF1-141, 16 December 2004.
[3132] Transcript of 11 April 2005, TF1-141, pp. 80, 82.
[3133] Transcript of 11 April 2005, TF1-141, pp. 79-80.
[3134] Transcript of 11 April 2005, TF1-141, p. 88.
[3135] Transcript of 11 April 2005, TF1-141, p. 89.
[3136] Transcript of 11 April 2005, TF1-141, p. 89.
[3137] This would mean that the witness was born in 1986.
[3138] Transcript of 11 April 2005, TF1-141, p. 78.
[3139] Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, pp. 4-5.

and collect inside information from enemy positions.[3140] Those children not required to take part in combat performed domestic chores in the homes of their Commanders.[3141]

10.1.3. Military Training of Children by the RUF

10.1.3.1. Bayama Training Base

1633. From 1997 to 1998, the RUF used the Bayama training base, located 23 miles from Kailahun, to train abducted boys and girls[3142] who were placed under the command of CO Jah Glory and his deputy, Morris Kakwa.[3143] The RUF decreed that all persons approaching Bayama were to be taken prisoner and transferred to the base for training.[3144] The Bayama training base was subsequently moved to Bunumbu, closer to the RUF Headquarters which at the time was located in Giema.[3145]

10.1.3.2. Bunumbu Training Base: "Camp Lion"

1634. The RUF training base at Bunumbu, which was known as "Camp Lion," operated from approximately February 1998 until December 1998,[3146] when it was moved to Yengema in Kono District.[3147]

1635. In February 1998,[3148] there were five platoons at Bunumbu: SBU, SGU, Adult Men, Wives, and Old Ages. The SBU and SGU comprised children between 8 and 15 years of age.[3149] In May 1998, 53 children were being trained as SBUs at Bunumbu.[3150]

[3140] Transcript of 19 January 2005, TF1-071, pp. 31, 35, 39.
[3141] Transcript of 19 January 2005, TF1-071, pp. 36-37
[3142] Transcript of 14 March 2006, TF1-330, p. 51 (CS).
[3143] Transcript of 8 March 2006, TF1-108, p. 44.
[3144] Transcript of 8 March 2006, TF1-108, p. 41
[3145] Transcript of 8 March 2006, TF1-108, p. 42. Transcript of 14 March 2006, TF1-330, p. 51 (CS).
[3146] While witnesses referred to both "Camp Lion" and "Bunumbu" training base, the Chamber is satisfied that both names refer to the same training base which was located at Bunumbu outside Kailahun Town. *See* Exhibit 25, Report from Camp Lion Training Base Training Commandant, Buedu to the G-1 Commander at Buedu on Recruits, 21 May 1998, where the base is called "Camp Lion Training Base – Bunumbu."
[3147] Transcript of 20 April 2005, TF1-362, p. 42; Transcript of 22 April TF1-362, p. 12; Transcript of 14 March 2006, TF1-330, p. 51 (CS).
[3148] *Prosecutor v. Sesay, Kallon and Gbao*, Case No.SCSL-04-15-PT, Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 24 June 2004, pp. 16–17.
[3149] Transcript of 22 April 2005, TF1-362, p. 8 (CS); Transcript of 28 July 2005, TF1-036, pp. 15-16 (CS).
[3150] Exhibit 25, Report from Camp Lion Training Base Training Commandant Buedu to G-1 Commander at Buedu on Recruits, 21 May 1998.

1636. In February 1998, a number of young boys, girls and young women[3151] from Koidu and other locations in Kono District[3152] were taken to Camp Lion.[3153] Among the recruits was TF1-141, who was 12 years old and had been captured during the AFRC/RUF attack on Koidu Town.[3154] Upon their arrival at Camp Lion, the camp combat medics used belts as tourniquets which they tied around the children's arms in order to expose and inject a full syringe into their veins. TF1-141 testified that the "medicine" made him sleep for three days.[3155]

1637. TF1-263 was 14 at the time of his induction to Camp Lion and was trained by Monica Pearson for two months from February 1998. Trainees were split into four "platoons" of fifteen. TF1-263 and ten other 14 year olds were in one platoon.[3156] They were trained to mount attacks on urban communities, torch houses, fight and fire weapons such as AK-47s, RPGs and 2-barrel guns.[3157]

1638. In 1998, Dennis Koker saw Morris Kallon bring juveniles under 15 years of age[3158] to Bunumbu for training.[3159] On or about 9 June 1998, Kallon, Superman, and Sesay issued orders that "young boys" should be trained to become soldiers and handle weapons at Bunumbu. These boys were 15 years of age and above. SBUs, however, were children as young as 9 to 11 years of age who were tasked with carrying weapons for the RUF.[3160]

1639. The lists of recruits drawn up by adjutants at the base included their names, ages and other personal data. Reports on the trainees were compiled by the adjutant and sent to the deputy at the training base and then to the training commandant who would forward them to an advisor. The reports were given next to Sesay, and finally to Bockarie.[3161] Every such report

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[3151] Transcript of 12 April 2005, TF1-141, p. 22-23: "You have to go to the training base because you have to be soldiers yourselves."
[3152] Transcript of 12 April 2005, TF1-141, p. 27.
[3153] Transcript of 12 April 2005, TF1-141, p. 14.
[3154] Transcript of 11 April 2005, TF1-141, p. 89. *Supra* para. 1630.
[3155] Transcript of 12 April 2005, TF1-141, pp. 27-28.
[3156] Transcript 6 April 2005, TF1-263, p. 34-35.
[3157] Transcript 6 April 2005, TF1-263, pp. 35-38.
[3158] Transcript of 28 April 2005, TF1-114, p. 66.
[3159] Transcript of 28 April 2005, TF1-114, p. 67.
[3160] Transcript of 8 November 2005, TF1-366, pp. 65-68 (CS); Transcript of 20 July 2004, TF1-199, p. 37; Transcript of 21 July 2006, TF1-371, p. 63 (CS).
[3161] Transcript of 22 April 2005, TF1-362, pp. 6-12 (CS).

was either hand-delivered or communicated via radio to Sesay, and delivery confirmations were communicated back to the base.[3162]

1640. Boys in SBUs underwent a three-part practical training at Camp Lion training base.[3163] The first part of the training involved learning how to dismantle and reassemble a gun.[3164] The second part of the training was known as the "alaka" which involved recruits, mostly SBUs and SGUs but also some adults,[3165] entering a circular structure which had a single entrance and exit. While inside, the recruits were required to cross their hands behind their backs and crawl on the ground as instructors beat them with canes.[3166] The recruits also traversed the "monkey bridge," which consisted of a layer of sticks, by walking on their hands. Alternatively, recruits were forced to cross the "monkey bridge" while holding sticks to maintain balance. Those who fell landed on barbed wire and at times were shot.[3167]

1641. The third and final part of the training was known as FFAP ("Firing From All Positions"). Recruits were instructed on how to discharge their weapons while in fighting positions using live ammunition.[3168] Recruits who were unable to endure the training regime would be shot and killed.[3169]

1642. During his training, TF1-141 was in a unit known as the "Ranger Squad" with other SBUs[3170] and Michael Loleh was his practical training instructor.[3171] Many of the recruits that trained together with TF1-141 perished during the training, either from beatings or shootings or from injuries sustained by falling off the "monkey bridge" onto barbed wire.[3172]

1643. On occasion RUF Commanders including CO Vandi, CO Denis and Sesay visited Camp Lion and addressed the recruits. Commanders generally identified themselves at the

[3162] Transcript of 22 April 2005, TF1-362, p. 12 (CS).
[3163] Transcript of 28 July 2005, TF1-036, p. 15 (CS).
[3164] Transcript of 12 April 2005, TF1-141, p. 24.
[3165] Transcript of 12 April 2005, TF1-141, pp. 26-27.
[3166] Transcript of 12 April 2005, TF1-141, p. 24.
[3167] Transcript of 12 April 2005, TF1-141, pp. 24-26.
[3168] Transcript of 12 April 2005, TF1-141, p. 25.
[3169] Transcript of 12 April 2005, TF1-141, p. 25.
[3170] Transcript of 12 April 2005, TF1-141, p. 35.
[3171] Transcript of 12 April 2005, TF1-141, p. 23.
[3172] Transcript of 12 April 2005, TF1-141, pp. 25-26.

outset of their addresses.[3173] Sesay on one occasion informed the recruits that his security "boys" were capturing civilians and sending them to the camp. TF1-141 further recalled:

> Then he also said that if at all anyone had [...] gone through the training, if you go to the front line to the battlefield, whatever you were told to do is what you will do. If you failed to do it, like, he himself, he will not accept that. He even set an example, he said he would execute you if you failed to do what you were told to do.[3174]

1644. At the end of training and after "graduation," the recruits were deployed throughout the country. SBUs were mixed with other fighters and accompanied them to the front lines.[3175]

1645. Upon "graduating" from Camp Lion, TF1-141 was sent to Baima in Kailahun District, where an RUF Commander named War Eagle headed the 1st Battalion.[3176] From there he was sent to the 4th Battalion combat camp in Benduma, along with other children who were younger than him. At Benduma, from approximately February to December 1998, TF1-141 served as a security guard for the camp. In this role, he was not required to go to the front line. Security guards patrolled the camp carrying guns and watching for enemies.[3177] TF1-141 testified that he and the other children received instructions from the platoon Commander, Lieutenant Swallow. In addition to providing security for the camp, the SBUs' tasks included fetching water and wood for the logistics staff ("S4") responsible who prepared the evening meals for the fighters.[3178] TF1-141 also testified that he took an "active part at the battlefields."[3179]

10.1.3.3. Yengema Training Base

1646. In approximately December 1998, Bockarie and Sesay issued orders to move the RUF training base from Bunumbu to Yengema in Kono District.[3180] Sesay personally discussed the

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[3173] Transcript of 12 April 2005, TF1-141, p. 30.
[3174] Transcript of 12 April 2005, TF1-141, pp. 30-32.
[3175] Transcript of 12 April 2005, TF1-141, p. 35.
[3176] Transcript of 12 April 2005, TF1-141, pp. 36-37.
[3177] Transcript of 12 April 2005, TF1-141, pp. 38-39. The witness subsequently stated that the fighters at the camp were sent to attack Daru, and that these fighters were from the 4th Battalion: Transcript of 12 April 2005, TF1-141, p. 45. The Chamber therefore finds that TF1-041 was assigned to the 4th Battalion at Benduma.
[3178] Transcript of 12 April 2005, TF1-141, p. 38-39.
[3179] Transcript of 12 April 2005, TF1-141, p. 39: Q. "Were there any other activities that you saw being done by the SBUs?" A. "Well, no; except that we took an active part at the battlefields. That was what I saw."
[3180] The Chamber finds that the Yengema base was established in December 1998 as TF1-362 testified that it was established after the "whole of Kono" had been captured: Transcript of 22 April 2005, TF1-362, p. 12. We find this to be a reference to the December 1998 campaign led by Sesay in which the RUF removed ECOMOG from Koidu Town and reasserted their control over Kono: *supra* paras 868-869.

creation of the new Yengema base with the training Commander. A large number of recruits from Bunumbu in Kailahun District and from Kono District were trained at Yengema. The base operated until the end of the disarmament process in Sierra Leone.[3181]

1647. The training base at Yengema was similarly organised to its predecessor in Bunumbu. Recruits were divided into five platoons, which included one SBU and one SGU platoon.[3182] Children were subjected to the same training as adults,[3183] such as military discipline, physical endurance, armour and artillery classes, and how to mount ambushes.[3184] After "graduating," the men and SBUs were sent to the front lines and SGUs served the Commanders at base camp.[3185] The training Commander at Yengema, Monica Pearson, reported directly through Sesay to Bockarie,[3186] until Bockarie left the RUF in December 1999. She then reported to Sesay only.[3187]

1648. Monica Pearson also conducted advanced training courses in Yengema[3188] in 1999.[3189] The recruits were trained in the art of conducting ambushes, mounting attacks, and carrying out reconnaissance missions or "recky." The reconnaissance training involved instructing children that they must always wear civilian clothing in towns and teaching them how to carry wares on their heads to sell so that they would be able to conduct missions in towns without being identified as RUF fighters.[3190]

10.1.4. Use of children by the RUF and AFRC forces

10.1.4.1. The RUF in Kailahun District (November 1996 to 1998)

10.1.4.1.1. Children in combat

1649. TF1-093 started fighting for the RUF at 15 years of age and took part in approximately 20 battles from 1996 to 1997 in Kailahun.[3191] TF1-093 followed orders issued by Superman to

[3181] Transcript of 22 April 2005, TF1-362, pp. 13-15 (CS).
[3182] Transcript of 22 April 2005, TF1-362, p. 19 (CS).
[3183] Transcript of 22 April 2005, TF1-362, p. 21 (CS).
[3184] Transcript of 22 April 2005, TF1-362, pp. 20-21 (CS).
[3185] Transcript of 22 April 2005, TF1-362, p. 26 (CS).
[3186] Transcript of 22 April 2005, TF1-362, p. 16 (CS).
[3187] Transcript of 22 April 2005, TF1-362, p. 17 (CS).
[3188] Transcript of 3 July 2006, TF1-117, pp. 80-83.
[3189] Transcript of 3 July 2006, TF1-117, pp. 42-43.
[3190] Transcript of 3 July 2006, TF1-117, pp. 81-84.
[3191] Transcript of 29 November 2005, TF1-093, p. 93 (CS).

fight and kill under the threat that she would lose her own life if she refused to obey.[3192] Other children between 8 and 17 years of age[3193] also fought for the RUF.[3194] Fighters were armed with sticks, knives, cutlasses, guns and RPGs,[3195] with which they would kill children, elderly men and women, and teenagers.[3196] They also engaged in beating people and raping children,[3197] and those children who were permitted to live were forced to join the movement.[3198]

1650. In December 1998, all of the fighters from the camp at Benduma, including TF1-141 and reinforcements from Baima, were sent to attack ECOMOG and the Kamajor forces at Daru. Bockarie supplied them with ammunition and ordered them to capture the town.[3199] After Bockarie left, Sesay and Mike Lamin arrived at the camp with "morale boosters" including jamba,[3200] Maminyini rum, cigarettes and hard tobacco known as tongoni. The "morale boosters" were distributed amongst the fighters, including TF1-141, by the Commanders in preparation for combat.[3201]

1651. TF1-141 participated in the attack on Daru using an ULIMO-AK gun that had been in his possession since his first day with the 4th Battalion. Guns and ammunition had been distributed at a muster parade of the 4th Battalion, and boys of his height and taller were also issued with guns.[3202] The battle against ECOMOG and the Kamajor forces at Daru was successful and after the RUF had captured the town, TF1-141 and his compeers of the SBU decided to torch a house.[3203]

1652. Following the attack on Daru, TF1-141 returned to Benduma combat camp, from where he travelled to Baima Town. He resided in Baima Town for some time before being given his next assignment, which was to assist in the RUF attack on Segbwema. From Baima

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[3192] Transcript of 29 November 2005, TF1-093, p. 93-95 (CS).
[3193] Transcript of 29 November 2005, TF1-093, pp. 93-94 (CS).
[3194] Transcript of 29 November 2005, TF1-093, p. 95 (CS).
[3195] Transcript of 29 November 2005, TF1-093, p. 94 (CS).
[3196] Transcript of 29 November 2005, TF1-093, pp. 94-95 (CS).
[3197] Transcript of 29 November 2005, TF1-093, p. 94 (CS).
[3198] Transcript of 29 November 2005, TF1-093, p. 96 (CS).
[3199] Transcript of 12 April 2005, TF1-141, pp. 40-42.
[3200] Jamba is a colloquial term for marijuana.
[3201] Transcript of 12 April 2005, TF1-141, pp. 32-33.
[3202] Transcript of 12 April 2005, TF1-141, p. 45.
[3203] Transcript of 12 April 2005, TF1-141, p. 45.

Town, War Eagle, who was in charge of the 1st Battalion, sent a radio message to the company Commanders, ordering all companies and platoons to send fighters to take part in the attack on Segbwema.[3204] Colonel Gassimu was the Commander in charge of this mission and TF1-141 was assigned to the fighters ordered to capture the centre of the city.[3205] On the way to Segbwema, they first captured Manowa, during which attack many ECOMOG soldiers and Kamajors lost their lives.[3206] After departing Manowa, the fighters passed through smaller villages throughout the night, arriving at Segbwema at dawn.[3207]

1653. At Segbwema the adult fighters separated from the SBUs. One of the SBUs stood on a landmine and the detonation indicated the fighters' presence to the ECOMOG forces in Segbwema.[3208] Heavy artillery fire was exchanged with ECOMOG forces and the Kamajors until the town was eventually taken. After its seizure, Segbwema was looted and TF1-141 and other SBUs looted medicine from Dixon Hospital on the road from Manowa to Bunumbu.[3209] Colonel Gassimu and his deputy, Passaway, also ordered the SBUs to loot and then torch civilian homes.[3210]

10.1.4.1.2. Children as bodyguards for Commanders

1654. On various occasions from 1997 until disarmament, TF1-045 observed Bockarie, Sesay, and Kallon with SBUs in Kailahun District.3211 TF1-113 saw Sesay and Bockarie accompanied by SBUs as young as 10 from 1996 until disarmament in Kailahun District.[3212]

1655. From 1996 to 1998, Sesay's bodyguards lived at his house in Kailahun together with their younger brothers and other family members, who included children between 8 and 13 years of age. Their duties were to fetch water, gather wood and cook. Some were given military training. Musa Vandi, a.k.a. Boys, and his three brothers Alhaji, Momoh and Ansu, lived in Sesay's residence during the time that their uncle was in Kailahun District. Tommy was one of Sesay's bodyguards and lived in his home together with his sister Finda, who was 11 years of

[3204] Transcript of 12 April 2005, TF1-141, p. 47.
[3205] Transcript of 12 April 2005, TF1-141, p. 47.
[3206] Transcript of 12 April 2005, TF1-141, pp. 48-49.
[3207] Transcript of 12 April 2005, TF1-141, p. 48.
[3208] Transcript of 12 April 2005, TF1-141, p. 50.
[3209] Transcript of 12 April 2005, TF1-141, p. 51.
[3210] Transcript of 12 April 2005, TF1-141, p. 51-53.
[3211] Transcript of 21 November 2005, TF1-045, p. 39.

age in 1996.[3213] A small boy from Kenema named Maada who went to Buedu during the Intervention also lived in Sesay's house but he was not required to participate in fighting.[3214]

1656. Sesay had other SBUs working for him in 1996 and 1997, including Abdulai Musa (aka X), who was 9 or 11 years old, and Moses, who was barely 12 years of age in 1996.[3215] These boys were assigned, together with a young man named Vandi, who was between 18 and 20 years of age at the time, to guard civilians working at Sesay's farm in Kailahun.[3216] In general, these children were used in a supervisory capacity to control the farm work, and to ensure that civilians who refused to work were punished with severe beatings.[3217]

1657. TF1-113 observed Gbao with SBUs from 1996 to 1997 in Kailahun District.[3218] At about the time of the coup in May 1997, one of Gbao's SBUs in Kailahun District was a boy named Morie, who was younger than 10 years of age. On one occasion Morie attempted to force TF1-113's child to join him on a mission. TF1-113 refused to allow her child to go and Morie subsequently reported the incident to Gbao and claimed that TF1-113 had spoiled the mission. The next morning, Gbao ordered three SBUs to bring TF1-113 from Bunumbu to Kailahun, strip her naked and punish her with a severe beating.[3219]

1658. TF1-141 saw Gbao with SBUs in Kailahun Town on two occasions in February 1998. Gbao had two boys who acted as his security guards and who attended muster parade every morning.[3220] The boys were armed, and would follow Gbao walking at his back. Their exact age is uncertain, but they were older than the 12-year old witness who observed them.[3221]

1659. From 1998 to 1999, TF1-036 saw Bockarie, Sesay, Kallon and Gbao in Buedu with SBUs aged between eight and 15 years of age.[3222]

10.1.4.1.3. Children sent on food-finding missions

[3212] Transcript of 2 March 2006, TF1-113, p. 65.
[3213] Transcript of 24 May 2007, Issa Sesay, pp. 5-6.
[3214] Transcript of 15 May 2007, Issa Sesay, pp. 2-3.
[3215] Transcript of 7 March 2006, TF1-108, pp. 113-115.
[3216] Transcript of 7 March 2006, TF1-108, pp. 113-115.
[3217] Transcript of 8 March 2006, TF1-108, p. 23.
[3218] Transcript of 2 March 2006, TF1-113, p. 66.
[3219] Transcript of 2 March 2006, TF1-113, p. 67.
[3220] Transcript of 12 April 2005, TF1-141, p. 21.
[3221] Transcript of 12 April 2005, TF1-141, p. 22.
[3222] Transcript of 28 July 2005, TF1-036, pp. 17-18 (CS); Transcript of 2 March 2006, TF1-113, p. 65.

1660. While she was at Buedu from 1994 to 1998, TF1-314 was an SGU and took part in two food-finding missions along with 25 other girls from SBUs whose ages ranged between 10 to 15 years. Ten of the 15-year-olds were armed with pistol grips, AK-48s and AK-58s. After entering a village that they intended to loot, they threw stones onto the roofs of the houses to intimidate civilians and force them out of their homes, which the girls then entered and looted. The loot was brought back and given to their Commander.[3223] TF1-314 testified that she was unable to escape during this time, as she was afraid for her life.[3224]

10.1.4.2. The AFRC/RUF forces in Kenema and Kono Districts

1661. By March 1998, citizens in Freetown regularly observed armed children among the RUF and AFRC forces.[3225] Child soldiers were so common that reports sent to the President of Sierra Leone did not differentiate between child and adult fighters.[3226] In recognition of the enormous problem it would face in dealing with ex-child combatants, the Kabbah Government arranged for a residence to be constructed in Bo to house such children.[3227]

1662. Kallon was seen with SBUs between the ages of 13 and 17 in Freetown in 1997.[3228]

10.1.4.2.1. Kenema District (May 1997 to February 1998)

1663. Between May 1997 and February 1998, young male and female soldiers armed with AK-47's, some as young as 12 years old, were present in Kenema District.[3229]

10.1.4.2.1.1. Children guarding mines in Tongo Fields

1664. During the Junta period, the RUF and AFRC assigned child soldiers to guard mining sites in Kenema. The RUF and AFRC soldiers in Tongo included SBUs under the age of 15, with witnesses testifying that some SBUs were as young as nine.[3230] There were over 100 SBUs

[3223] Transcript of 2 November 2005, TF1-314, pp. 31-36.
[3224] Transcript of 2 November 2005, TF1-314, pp. 43-44.
[3225] Transcript of 16 May 2008, Tejan Kabbah, p. 102.
[3226] Transcript of 16 May 2008, Tejan Kabbah, pp. 102-103.
[3227] Transcript of 16 May 2008, Tejan Kabbah, p. 101.
[3228] Transcript of 21 November 2005, TF1-045, p. 39.
[3229] Transcript of 7 July 2005, TF1-122, pp. 97-98
[3230] Transcript of 5 July 2005, TF1-035, pp. 83-84; Transcript of 18 November 2005, TF1-045, p. 71; Transcript of 29 April 2005, TF1-060, pp. 70 75 (CS); Transcript of 29 April 2005, TF1-060, pp. 70-75 (CS).

in Tongo Field and they were assigned to guard Cyborg Pit in groups of up to 15.[3231] These SBUs were under Bockarie's control and were accompanied by Bockarie's Junior Commanders who were 17 years of age and older.[3232] The boys were selected for this assignment because they would obey orders to beat or shoot miners at the site who breached the mining rules, whereas the older soldiers tended to speak to adult miners first.[3233] Some of the young boys were so small that they did not have the strength to carry their guns but had to drag them along.[3234]

1665. Child soldiers committed most of the documented killings in Tongo.[3235] On one occasion, Bockarie was present at Cyborg Pit and he ordered a group of miners to exit the pit. As the miners were climbing out of the pit, Colonel Manawa fired an RPG in the air. The SBUs opened fire and killed approximately 20 of the people in the pit.[3236]

1666. On another occasion in October 1997, Bockarie received a report that civilians at Cyborg Pit were mining without permission from the RUF. Bockarie dispatched SBUs to Cyborg Pit who opened fire on the civilians, killing three and injuring many.[3237] That same month, at Sandeyeima swamp, civilians were washing gravel for mining when children arrived and opened fire at them, killing two people and injuring many. [3238] SBUs would shoot at civilians who attempted to steal gravel or hide diamonds. SBUs were also instructed to beat village elders during raids carried out to abduct civilians to bolster the labour forces for the government mines.[3239]

10.1.4.2.1.2. Children engaged in domestic chores in Tongo Field

1667. In Tongo and Kenema in 1998, SBUs between the ages of 12 and 15 carried arms and performed domestic work such as pounding rice, preparing food and laundering clothes. Some

[3231] Transcript of 29 April 2005, TF1-060, pp. 70–75 (CS).
[3232] Transcript of 5 July 2005, TF1-035, pp. 83–84. The Chamber recalls that 'Junior Commanders' was the term used to identify the status of all RUF fighters trained in Sierra Leone, as distinct from the more senior and respected fighters who were trained in Liberia or Libya: *supra* para. 667.
[3233] Transcript of 18 November 2005, TF1-045, pp. 79–80; Transcript of 5 July 2005, TF1-035, p. 84.
[3234] Transcript of 5 July 2005, TF1-035, p. 84.
[3235] Transcript of 29 April 2005, TF1-060, pp. 70–75 (CS). *See supra* para. 1106.
[3236] Transcript of 5 July 2005, TF1-035, pp. 87–88 and pp. 92–93.
[3237] Transcript of 29 April 2005, TF1-060, pp. 70–75 (CS).
[3238] Transcript of 29 April 2005, TF1-060, pp. 70–75 (CS).
[3239] Transcript of 29 April 2005, TF1-060, pp. 70–75 (CS).

engaged in combat.[3240] The majority of RUF Commanders were accompanied by SBUs.3241 SGUs remained with the wives of senior Commanders doing their cleaning, washing and cooking.[3242] One former member of the RUF described such arrangements as a "practice which was prevalent among the Commanders."[3243]

10.1.4.2.2. Kono District (February to April 1998)

1668. In February 1998, after ECOMOG forced the AFRC/RUF to retreat from Freetown, many children who were identified as members of the RUF[3244] were in danger of losing their lives as they were regarded as being those who "had been responsible for killings and torture." [3245] An unknown number of children of 16 years of age and younger, many of these whom had experience in handling guns, retreated with the RUF from Freetown to Kono District.[3246]

10.1.4.2.2.1. Children as bodyguards

1669. TF1-263 was 14 years of age when he saw Sesay and Superman with child bodyguards in Kono in February/March 1998. These children were about the same height as him.[3247] He also observed Kallon with child bodyguards in Kono at this time. One of these children told TF1-263 that he was 15 and TF1-263 observed that the other children were about TF1-263's height.[3248] Sesay and Kallon's child bodyguards engaged in combat.[3249] TF1-141 was 12 years old when he saw Kallon, Akisto and Forty Barrel with SBUs at the Guinea Highway in February 1998. The boys in these SBUS were mostly the same height as TF1-141, although he noticed that some were taller and thus estimated that they were older than him.[3250]

[3240] Transcript of 21 November 2005, TF1-045, p. 15.
[3241] Transcript of 21 November 2005, TF1-045, p. 39.
[3242] Transcript of 2 March 2006, TF1-113, p. 68; Transcript of 28 July 2005, TF1-036, p. 17 (CS); Transcript of 2 March 2006, TF1-113, p. 69.
[3243] Transcript of 28 April 2005, Dennis Koker, p. 62.
[3244] Exhibit 176, Sierra Leone 1998 –a year of atrocities against civilians, 1 November 1998, p. 19505.
[3245] Exhibit 176, Sierra Leone 1998 –a year of atrocities against civilians, 1 November 1998, p. 19505.
[3246] Transcript of 27 January 2005, TF1-015, pp. 135-136 (CS).
[3247] Transcript of 6 April 2005, TF1-263, p. 25.
[3248] Transcript of 6 April 2005, TF1-263, p. 26.
[3249] Transcript of 6 April 2005, TF1-263, p. 26.
[3250] Transcript of 11 April 2005, TF1-141, pp. 91-92.

1670. In Kono, some lower-ranking Commanders also used children as bodyguards. For instance, during 1998,[3251] Vandy, who was 14 years of age; Kefala, who was 15 years of age; and Omeh, who was 16 years of age accompanied DIS-157 on patrol from PC Ground and travelled with fighters, but they did not go to the front lines.[3252]

1671. During the attack on Koidu Town in December 1998, Sesay was accompanied by his security guards, which included children between the ages of 12 and 15 years. Sesay's security guards accompanied him to ensure his safety.[3253]

10.1.4.2.2.2. Crimes committed by children

1672. Several weeks after the Intervention in February 1998, RUF rebels in Sawao ordered a young fighter to sever the hands of captured civilian men who were accused of being Kamajors and Kabbah supporters.[3254] The boy was younger than 14 years old.[3255] The same boy was also seen severing the arms of captured women.[3256] TF1-334 also testified that children who were assigned to various Commanders were used to carry out amputations in villages in Kono District.[3257]

1673. In April 1998 in Koidu, when Major Rocky killed 30 to 40 civilians, SBUs were used to behead the corpses.[3258] Furthermore, SBUs from the ages of 12 upwards executed Bockarie's orders, passed to them by Superman, to burn residences and vehicles in Koidu.[3259]

1674. In February/March 1998 at Tombodu, up to 20 little boys forced civilians to mine at gunpoint. Children as young as 6 years of age were armed with guns.[3260] The boys would shoot at those miners that stopped working.[3261] On one occasion, the mining Commanders Tactical, Officer Med and Gibbo brought a town Chief named S.E. Sogbeh to the mine at Tombodu

[3251] Transcript of 24 January 2008, DIS-157, p. 109.
[3252] Transcript of 24 January 2008, DIS-157, pp. 106-107.
[3253] Transcript of 22 June 2006, TF1-367, pp. 34-35.
[3254] Transcript of 1 February 2005, TF1-195, p. 22.
[3255] Transcript of 1 February 2005, TF1-195, p. 23.
[3256] Transcript of 1 February 2005, TF1-195, p. 24.
[3257] Transcript of 20 May 2005. TF1-334, p. 6.
[3258] Transcript of 27 January 2005, TF1-015, p. 136 (CS).
[3259] Transcript of 22 June 2006, TF1-367, pp. 16-17.
[3260] Transcript of 20 July 2004, TF1-077, p. 109; Transcript 20 July 2004, TF1-077, pp. 78-81, 109; Transcript of 21 July 2004, TF1-077, p. 28.
[3261] Transcript of 2 February 2005, TF1 012, pp. 30-37.

but he refused their order to work, stating that he was unable to work as he had been severely flogged by some little boys.[3262] Sogbeh was shot three times by a boy named Samuel who was about 12 years old.[3263]

10.1.4.2.2.3. Children sent on food-finding missions

1675. During muster parades at the Guinea Highway in February/March 1998, Kallon would instruct TF1-141, who was 12 years old at the time, and other SBUs of approximately the same age to participate in food-finding missions. During such missions, women were raped, and civilians were captured and forced to carry looted loads of food.[3264]

10.1.4.3. The AFRC Attack on Freetown (January 1999)

1676. In January 1999, when the AFRC lost the Eastern Police Station at Cline Town to ECOMOG, Gullit instructed the troops at PWD to abduct civilians in order to attract international media attention.[3265] The AFRC, in implementing these orders, forcibly entered houses and abducted approximately 300 civilians, including children.[3266]

1677. Abducted children as young as 9 or 10 years of age, were trained as SBUs. Two such children were handed over to TF1-334.[3267] Gullit ordered that every Commander who had children between the age of 10 and 12 should train them;[3268] and subsequently boys between the ages of 10 and 12 were trained in the discharge of weapons.[3269]

1678. In January 1999,[3270] SBUs were present in Calaba Town as part of a mixed group of young children and older fighters. The younger fighters were around 13 to 16 years of age.[3271]

1679. Also, in January 1999, in Freetown near Ferry Junction, by Kissy-Road,[3272] a 14 year old boy was observed dressed in combat clothes and a red head-tie,[3273] holding a gun.[3274] He was

[3262] Transcript 20 July 2004, TF1-077, pp. 80-81.
[3263] Transcript of 20 July 2004, TF1-077, p. 111-112; Transcript of 20 July 2004, TF1-199, pp. 80-82.
[3264] Trasncript of 11 April 2005, TF1-141, pp. 90-93.
[3265] Transcript of 14 June 2005, TF1-334, pp. 63-64.
[3266] Transcript of 14 June 2005, TF1-334, p. 116.
[3267] Transcript of 14 June 2005. TF1-334, pp. 63-64, 121-122.
[3268] Transcript of 15 June 2005, TF1-334, p. 15.
[3269] Transcript of 15 June 2005, TF1-334, p. 15.
[3270] Transcript of 28 November 2005, TF1-029, p. 10.
[3271] Transcript of 28 November 2005, TF1-029, p. 13.
[3272] Transcript of 28 November 2005, TF1-097, pp. 82-83.

accompanied by an older rebel. The 14 year old wanted to shoot TF1-097 but the older rebel made the boy desist from this action by threatening to kill him if he fired at TF1-097.[3275]

1680. At about 5:00pm on 18 January 1999, when TF1-104 arrived at the Good Shepherd Hospital in Kissy, a group of AFRC fighters entered the hospital ostensibly to search for injured ECOMOG soldiers and Kamajors and forced 200 patients and staff to leave the hospital.[3276] TF1-104 had worked previously with child soldiers and recognised three of them in the group that entered the hospital. They told him that they had rejoined the RUF in order to attack Freetown and that Captain Blood was one of the senior members of their group.[3277]

1681. TF1-093 commanded a group of about 50 rebels during the attack, including children. This group torched houses and raped civilians at Upgun, Fourah Bay Road and Eastern Police Station.[3278] They killed more than 20 people, some with their families, as well as others who were burned alive in their homes.[3279]

1682. On 22 January 1999 in Allen Town,[3280] three child soldiers, between the ages of 9 and 11 severed TF1-022's hand with an axe and placed it in a plastic bag on the orders of their Commander.[3281] The boys had an axe, a cutlass and a gun.[3282]

1683. In January 1999[3283] SBUs between 13 to 15 years of age in Allen Town guarded abducted civilians to ensure that none escaped.[3284] SBUs were assigned to guard various groups of civilians throughout Allen Town.[3285]

10.1.4.4. The RUF in Makeni and Magburaka (1999 to 2000)

[3273] Transcript of 28 November 2005, TF1-097, pp. 107-108.
[3274] Transcript of 28 November 2005, TF1-097, pp. 83-84.
[3275] Transcript of 28 November 2005, TF1-097, p. 84.
[3276] Exhibit 119, Transcript from AFRC Trial, Transcript of 30 June 2005, TF1-334, pp. 22-24.
[3277] Transcript of 28 November 2005, TF1-104, p. 71.
[3278] Transcript of 29 November 2005, TF1-093, pp. 105-107.
[3279] Transcript of 29 November 2005, TF1-093, p. 106.
[3280] Allen Town is in the Western Area, between Wellington and Hastings.
[3281] Transcript of 29 November 2005, TF1-022, pp. 34-36; Transcript of 29 November 2005, TF1-022, pp. 35-36.
[3282] Transcript of 29 November 2005, TF1-022, p. 34-35.
[3283] Transcript of 9 March 2005, TF1-023, p. 35.
[3284] Transcript of 9 March 2005, TF1-023, p. 35.
[3285] Transcript of 9 March 2005, TF1-023, p. 36.

1684. On 3 January 1999,[3286] RUF MP Commander Jalloh[3287] requested the citizens of Makeni to contribute young men to train for the RUF. Approximately 1000 youths were registered.[3288] About three weeks later, three trucks were loaded, each with about 100 men.[3289] They ranged from boys of 12 years of age to men in their early twenties.[3290] The children received military training and subsequently participated in RUF attacks as well as in looting, burning and killing. The majority of the children were between 11 and 15 years of age.[3291]

1685. Kallon was seen with SBUs, who were between 13 and 18 years of age, in Makeni between 1999 and 2000.[3292] Workers in the ICC also saw children among the RUF in Magburaka and Makeni.[3293]

1686. On 14 April 2000 UNAMSIL Commander Leonard Ngondi met Sesay at Teko Barracks, the RUF base in Makeni,[3294] to discuss Caritas's operations in Makeni. Ngondi had learned that the RUF had impeded Caritas's attempts to identify abducted child-combatants and return them to their families.[3295] In this meeting, Sesay indicated to Ngondi that he was concerned that "their" combatants were being removed from the territory by Caritas,[3296] from which Ngondi deduced that the RUF did not really understand the purpose of the Caritas programme.

1687. In May 2000, in a small village called Moria, near Makeni, approximately 100 RUF members mounted an ambush of UNAMSIL peacekeepers. The ambush team included fighters as young as 10 years of age who carried light weapons, rocket launchers and grenades.[3297]

1688. In May 2000, UNAMSIL peacekeeper Joseph Mendy observed child soldiers present at the RUF base where he was being held captive with a number of other peacekeepers, in Small

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[3286] Transcript of 21 March 2006, TF1-174, p. 22 (CS).
[3287] Transcript of 21 March 2006, TF1-174, p. 21 (CS).
[3288] Transcript of 21 March 2006, TF1-174, p. 23 (CS); Transcript of 7 July 2006, TF1-041, p. 60.
[3289] Transcript of 21 March 2006, TF1-174, p. 22 (CS).
[3290] Transcript of 21 March 2006, TF1-174, p. 21 (CS).
[3291] Transcript of 21 March 2006, TF1-174, p. 30 (CS), Transcript of TF1-041, p. 61 (CS).
[3292] Transcript of 21 November 2005, TF1-045, p. 39.
[3293] Transcript of 20 March 2006, TF1-174, p. 96 (CS).
[3294] Transcript of 29 March 2006, Leonard Ngondi, p. 12; Transcript of 20 June 2006, Ganese Jaganathan, p. 30.
[3295] Transcript of 29 March 2006, Leonard Ngondi, pp. 12-13.
[3296] Transcript of 29 March 2006, Leonard Ngondi, p. 13.
[3297] Transcript of 22 March 2006, Edwin Kasoma, p. 17-19.

Sefadu in Kono District. Some of these children visited Mendy each morning and informed him that they were "going to the mining area."[3298]

1689. Similarly, UNAMSIL Commander Edwin Kasoma testified that a quarter of the RUF guards at Yengema in Kono District, were he was detained in May 2000, were child soldiers between 10 and 12 years of age who had been conscripted into the RUF against their will.[3299] While he was detained at Yengema, he observed Sesay visiting on four occasions. Sesay was usually accompanied by 30 to 40 heavily armed RUF soldiers, including 10 to 12 child soldiers who were between 10 and 12 years of age.[3300]

1690. In early May 2000, after fighting broke out between the RUF and UNAMSIL personnel in Makeni, Caritas and UNICEF officials returned to Makeni to ensure that children were safely relocated from the Interim Care Centre there.[3301] When they reached Makeni on 14 May 2000, they discovered that the number of children residing in the ICC had reduced drastically from 320 to 150.[3302] They were told that Gbao and another RUF fighter had loaded the children onto a truck and removed them.[3303]

10.2. Legal Findings on the Conscription, Enlistment and Use of Child Soldiers

1691. The Indictment alleges that "[a]t 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 actively participate in 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."[3304] In light of the wording of the Indictment, the Chamber considers that "at all times relevant to [the] Indictment" means from 30 November 1996[3305] to 15 September 2000.[3306]

[3298] Transcript of 27 June 2006, Joseph Mendy, pp. 30-31.
[3299] Transcript of 22 March 2006, Edwin Kasoma, pp. 44-45: "Most of them indicated that they found themselves by no choice, they were conscripted into being members of the RUF."
[3300] Transcript of 22 March 2006, Edwin Kasoma, pp. 27-28.
[3301] Transcript of 21 March 2006, TF1-174, p. 65 (CS).
[3302] Transcript of 21 March 2006, TF1-174, p. 65 (CS).
[3303] Transcript of 21 March 2006, TF1-174, pp. 65-66 (CS).
[3304] Indictment, para. 68.
[3305] Indictment, para. 83.
[3306] Indictment, para. 71.

1692. The Chamber held in its Rule 98 Decision that the Prosecution did not adduce evidence in relation to Count 12 with respect to Bonthe, Moyamba, Pujehun, Bo and Tonkolili Districts. The Chamber finds that no evidence of child enlistment, conscription or active participation of children in hostilities has been adduced in respect of Kambia District. The Chamber recalls its finding that no liability can be attributed to the Accused in relation to crimes committed in Koinadugu, Bombali and Port Loko Districts.[3307]

1693. The Chamber has found that the AFRC and the RUF were armed groups.[3308] The Chamber is also satisfied that the perpetrators of the acts below acted intentionally at all times.

10.2.1. Conscription of Child Soldiers

1694. The Prosecution has not adduced evidence to establish that the RUF and AFRC forces accepted into their ranks persons under the age of 15 who voluntarily joined these armed groups through a process of enlistment or training. Rather, the evidence adduced by the Prosecution pertains principally to children who were abducted and forcibly trained. The Chamber has accordingly restricted its findings to the conscription of persons under the age of 15 into the RUF.

10.2.1.1. Conscription into an Armed Group

1695. We observe that either the abduction of persons for specific use within an organisation or the forced military training of persons is independently sufficient to constitute conscription, as both practices amount to compelling a person to join an armed group. However, given that we have found that many of the children abducted were then forcibly trained, it would be impermissible for the Chamber to treat these practices as separate bases for findings of conscription. We therefore find it appropriate to consider the evidence pertaining to the course of conduct as a whole.

1696. The Chamber has found that during military operations and attacks on villages and civilians, the RUF and later, the AFRC/RUF, routinely and systematically abducted children including those under the age of 15, who they deemed fit to perform specific functions within

[3307] *Supra* paras 1505, 1509, 1613.
[3308] *Supra* para. 970 and Consequential Order on Judicial Notice, Annex I, Facts H and J.

their fighting forces. We have found that such functions included forcibly subjecting them to military training with a view to using them in combat units and forces.

1697. In addition to the evidence of abductions throughout the armed conflict in general,[3309] we find that large numbers of children, including TF1-141 and TF1-263, were abducted by the AFRC/RUF forces in Kono District between February and April 1998.[3310] The Chamber recalls that TF1-141 and TF1-263 were 12 and 14 years of age respectively at the time of their abductions. We further find, noting the evidence that children as young as eight or nine were abducted, that many of the other children abducted in Kono District and Freetown were under the age of 15.

1698. We find that the RUF depended on this method of conscription to maintain its operational capability. We are reinforced in this finding because the continuous recruitment of manpower by the RUF for combat was capital, vital and indispensable for the pursuit and sustenance of their war effort, in order to ensure success and to facilitate the survival of the movement and the achievement of its objectives as defined in its ideology.

1699. We have found that abducted children under the age of 15, including TF1-141 and TF1-263, were then sent to be trained for military purposes at RUF bases including Bayama and Camp Lion in Kailahun District and Yengema in Kono District. We recall that there were SBU and SGU platoons at Bunumbu and Yengema, which included children aged between 8 and 15 years.

1700. The Chamber is satisfied that the children who were abducted and then forcibly trained at the RUF camps such as Bayama, Bunumbu and Yengema, were compelled to join the RUF. We therefore find that such conduct constitutes conscription. Although not all the children abducted were eventually subjected to military training, the Chamber has found that the children who were not trained were used for other purposes within the RUF.[3311] We therefore find that notwithstanding their ultimate use, these abductees were compulsorily enlisted as members of the RUF or AFRC forces and therefore conscripted.

[3309] *Supra* paras 1414-1416.
[3310] *Supra* paras 1630-1632.
[3311] *Supra* paras 1633-1648, 1660.

1701. We recall that in Makeni in 1999, hundreds of children between the ages of 11 and 15 were "registered" by the RUF and sent for military training on the request of an RUF MP Commander. The Prosecution has not adduced evidence to establish whether this practice involved voluntary or forced enlistment. Although proof of either element would suffice for the purpose of Count 12, in the absence of more detailed evidence in relation to this particular event, the Chamber relies on this evidence to corroborate our finding in relation to the scale and pattern of use of children within the RUF organisation.

10.2.1.2. Actual or Imputed Knowledge

10.2.1.2.1. Knowledge that the children were under the age of 15

1702. The Chamber further finds that the perpetrators of these acts knew or had reason to know that the persons abducted and forced to undergo military training were under the age of 15 years at the time. We recall that children as young as eight and nine were abducted.[3312] We are therefore satisfied that many children abducted were sufficiently young that the perpetrators knew from their physical appearance that they were under the age of 15. Furthermore, we recall that records were kept of the ages of the SBUs and SGUs trained at Bunumbu and Yengema, from which it is the only reasonable inference that the fighters who conducted the training knew or had reason to know that certain trainees were under the age of 15 years.

1703. We are nonetheless cognisant that in a substantial number of cases, the perpetrators were unable to have had actual knowledge or estimation of the child's age at the time of the abduction and training. We are of the view, however, that the perpetrators had reason to know that children under the age of 15 were being abducted and subjected to military training. We have found that the practice of abducting and training persons under the age of 15 with a view to their ultimate use in combat was widespread among both factions throughout the Indictment period. We recall that children were especially prized as fighters due to their agility and obedience.[3313] We note the evidence that in attacks on civilians, children's lives were often

[3312] *Supra* paras 1631-1632.
[3313] *Supra* para. 1616.

spared so that they could be utilised by the fighting forces.[3314] We conclude that RUF and AFRC fighters knew of this practice.

1704. We find these factors cumulatively sufficient to put the fighters who perpetrated the abductions and military training on notice that the persons involved may have been under the age of 15. The Chamber is of the opinion that the perpetrators are estopped from pleading lack of knowledge, having regard to these factors. The Chamber accordingly finds that where doubt may have existed as to whether a person abducted or trained was under the age of 15, it was incumbent on the perpetrators to ascertain the person's age.

1705. The Chamber therefore finds that the perpetrators of these abductions and training knew or had reason to know that persons subjected to these practices were under the age of 15.

10.2.1.2.2. Knowledge that the children may be trained in combat

1706. The Chamber finds that the RUF fighters who conducted the training of children at Bayama, Bunumbu and Yengema clearly possessed the requisite *mens rea* as they were actively training children for combat.

1707. Given the consistent pattern of conduct of abducting children for the specific purpose of subjecting them to military training and then using them in combat, combat-related activities, and the logistical imperative of this course of conduct for both factions, we find that the fighters who abducted persons under the age of 15 also knew that the children might be trained for combat. We opine in this regard that the fact that certain abductees were not ultimately subjected to military training is immaterial, as the purpose of the abductions was to ascertain the child's suitability for such training. Accordingly, the perpetrators knew at the time of the abduction that the victim may be trained for combat.

10.2.1.3. Findings on the Conscription of Child Soldiers

1708. On the basis of the foregoing, the Chamber finds that it is established beyond reasonable doubt that:

[3314] *Supra* para. 1630.

(i) between February and April 1998, RUF and AFRC fighters routinely abducted persons under the age of 15 in Kono District for the purpose of using them within their respective organisations; and

(ii) RUF fighters subjected persons under the age of 15 to forced military training at Bayama and Bunumbu in Kailahun District between 1997 and December 1998 and at Yengema in Kono District between December 1998 and September 2000.

1709. The Chamber therefore finds that the RUF routinely conscripted persons under the age of 15 into their armed group between 1997 and September 2000 in Kailahun and Kono Districts.

10.2.2. Use of Child Soldiers in Hostilities

10.2.2.1. Active Participation in Hostilities

10.2.2.1.1. Children in combat operations

10.2.2.1.1.1. Use of children in combat by the RUF

1710. The Chamber recalls that the SBUs were regarded as particularly useful in RUF military operations against the enemy forces and that the RUF used children under the age of 15 in combat activities at various frontlines.[3315]

1711. The Chamber is satisfied that children between the ages of 8 and 14 actively participated in hostilities in Kailahun after 30 November 1996 and throughout 1997, as witnessed by TF1-093.[3316] The Chamber finds that these children participated in hostilities by killing and raping civilians.

1712. The Chamber finds that when children burned houses and cars, on Bockarie's orders, during the retreat from Koidu in April 1998,[3317] they were participating in hostilities as the purpose of their actions was to destroy houses so that the advancing ECOMOG forces would not be able to use them.

[3315] *Supra* paras 1649-1653.
[3316] We note that although TF1-093 also fought during these battles, she was herself 15 at the time.
[3317] *Supra* para. 1673.

1713. The Chamber finds that TF1-141, who was 12 at the time, actively participated in hostilities when he was sent to Daru in December 1998 as part of an RUF mission to recapture the town from ECOMOG and Kamajor forces. TF1-141 also participated in hostilities when he was subsequently assigned to participate in the capture of Manowa and Segbwema in 1998 and when he was ordered to burn and loot on the road from Manowa to Bunumbu.

1714. The Chamber finds that in May 2000, the RUF used children, some as young as ten years of age, armed with light weapons, rocket launchers and grenades, to mount an ambush against UNAMSIL peacekeepers on the road from Lunsar to Makeni. The Chamber finds that this activity constitutes active participation in hostilities, as the RUF considered UNAMSIL to be an enemy force and considered that ambushing and abducting UNAMSIL personnel directly supported the RUF war efforts. The RUF fighters who used the children to participate in this ambush acted with the requisite knowledge and intent.

10.2.2.1.1.2. Use of children in combat by the AFRC

1715. The Chamber is satisfied that the AFRC forces who invaded Freetown in January 1999 used children under the age of 15 years to actively participate in hostilities. The Chamber has found that the attack on Freetown was accompanied by fierce fighting against ECOMOG.[3318] Armed children under the age of 15 were in the midst of this military operation and were therefore directly and actively involved in the hostilities.

1716. More specifically, TF1-104 was present when fighters, including three who he was able to identify as child soldiers, entered the Good Shepherd Hospital in Freetown in order to search for ECOMOG or Kamajor forces. The Chamber further finds that a 14-year old boy dressed in combat clothes and a red head-tie, who was seen holding a gun in January 1999 at Kissy Road in Freetown was actively participating in hostilities.

10.2.2.1.2. Children on armed patrols

1717. The Chamber recalls that Vandy, who was 14 years of age at the time, accompanied RUF fighters such as DIS-157 on patrol from PC Ground in Kono in 1998.[3319] The Chamber

[3318] *Supra* para. 882.
[3319] *Supra* para. 1670.

finds it is the only reasonable inference, given the military purpose of these missions and the presence of adult fighters, that at least some of the participants in the patrol were armed.

1718. Although Vandy was not sent to the front lines, the Chamber finds that the use of children to take part in armed patrols amounts to using them to actively participate in hostilities because such activities were clearly related to their military operations and objectives. This finding is based on the grounds that, given the circumstances of guerrilla war that prevailed in Sierra Leone at that time, RUF fighters on patrol were potential targets of enemy forces and that children participating in such patrols were exposed to the risk of possible surprise attacks by adverse forces. This situation predisposed them to immediately and spontaneously engage in participating actively in armed combat if and as soon as such an eventuality occurred.

10.2.2.1.3. Children perpetrating crimes against civilians

1719. The Chamber recalls that persons under the age of 15 within the RUF and the AFRC committed or were ordered to commit the following crimes against civilians:

(i) in February/March 1998, children were ordered to carry out amputations in Kono District and a boy younger than 14 years of age was ordered to amputate an arm of a civilian in Sawao;

(ii) following the killing by Rocky of 30 to 40 civilians in Koidu Town in April 1998, children beheaded their corpses;

(iii) children younger than 15 were used to intimidate and kill civilians working at the mines at Tombodu in Kono District in February/March 1998 and at the time a child called Samuel, who was about 12 years old, shot Chief Sogbeh for refusing to work;

(iv) children aged younger than 15 years of age were involved in the mass killings of civilians mining in the diamond pits in October 1997 at Cyborg Pit in Tongo Field in Kenema District and to beat civilians when the AFRC/RUF raided villages in search of civilians to work in the mines in Tongo Fields; and

(v) children under the command of TF1-093 burned houses and killed and raped civilians, while three children between the ages of 9 and 11 amputated TF1-022's hand on the orders of their Commander, during the attack on Freetown in 1999.

1720. The Chamber recalls the accepted view in international humanitarian law that hostilities are acts which by their nature or purpose are intended to cause damage or actual

harm to the adversary party.[3320] We have endorsed the proposition that the concept of hostilities encompasses not only combat operations but also military activities linked to combat such as the use of children at military checkpoints or as spies.[3321] The types of acts that may be characterised as hostilities, in the Chamber's view, may differ depending on the particularities of each armed conflict and the *modus operandi* of the warring factions. During the conflict in Sierra Leone, frequent and brutal acts of violence directed against civilians were a hallmark of the operations of the RUF and AFRC forces, and persons under the age of 15 years actively participated in these campaigns of amputations, killing, rape and enslavement.

1721. The Chamber finds that these acts, by their purpose, were directly linked to combat by the fact that they typically occurred while the children were armed and in the company of adult fighters and Commanders. In these circumstances, and emphasising the prevailing context of guerilla warfare, the children would constitute legitimate military targets for ECOMOG or Kamajor forces as they would be perceived as actively participating in hostilities.

1722. We find, furthermore, that the purpose of the crimes was ultimately to damage or harm the adversary. Through the commission of violent crimes against civilians, the AFRC and RUF forces intended to eradicate support for ECOMOG and the Kamajors.[3322] The RUF and AFRC also committed attacks on civilians in order to capture towns and consolidate control over territory, including the diamond mines. In so doing, the RUF and the AFRC/RUF also intended to destroy territory to prevent its use by ECOMOG and Kamajors, mostly notably when the AFRC/RUF fighters burned Koidu in 1998 and burned militarily significant locations in Freetown in 1999, in each case doing so in order to deny resources to ECOMOG and Kamajor forces. By instilling fear in and committing crimes against civilians who were forced to work at the diamond mines, the AFRC/RUF also intended to retain control over this critical resource, which remained a constant military objective of both sides.

1723. The Chamber is mindful that an overly expansive definition of active participation in hostilities would be inappropriate as its consequence would be that children associated with armed groups lose their protected status as persons *hors de combat* under the law of armed

[3320] ICRC Commentary on the Additional Protocol, 618.
[3321] *Supra* para. 188.
[3322] *Supra* paras 1387-1397.

conflict. Nonetheless, the Chamber finds that the nature and purpose of the crimes committed against civilians warrants their characterisation as active participation in hostilities. The Chamber considers this interpretation necessary to ensure that children are protected from any engagement in violent functions of the armed group that directly support its conflict against the adversary[3323] and in which the child combatant would be a legitimate military target for the opposing armed group or groups.

1724. The Chamber therefore concludes that in the context of an armed conflict where violence against civilians was an integral and defining feature of the conduct of hostilities, the concept of active participation in hostilities encompasses crimes committed against civilians. The Chamber accordingly finds that the use of children by RUF and AFRC fighters in the commission of crimes against the civilian population amounts to active participation in hostilities.

10.2.2.1.4. Children guarding military objectives

1725. The Chamber finds that the guarding of military objectives amounts to active participation in hostilities.[3324]

1726. The Chamber recalls that in 1998, the RUF used children including TF1-141, who was 12 years of age, to guard and provide security for the RUF military camp in Benduma[3325] and children aged between ten and 12 to guard the training base at Yengema.[3326] The Chamber finds that guarding a military camp constitutes active participation in hostilities as there was a high likelihood and realistic fear of enemy attacks. The Chamber is therefore satisfied that these children actively participated in hostilities by guarding military objects.

1727. The Chamber further recalls that control over the diamond mines in Kono and Kenema Districts was crucial for the war effort of all armed groups in the Sierra Leone conflict, due to the potential for revenue to be raised from the sale of diamonds to finance the purchase

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[3323] See also Targeted Killings Case, para. 33.

[3324] *See Lubanga* Confirmation of Charges, para. 263.

[3325] *Supra* para. 1645. The Chamber recalls that TF1-141 also testified that he took "an active part in the battlefields" during the period in which he resided with the RUF at the Benduma camp prior to December 1998: *supra* para. 1645. The Prosecution did not adduce evidence as to the functions undertaken by TF1-141 outside the camp and the Chamber has not relied on the witness's descriptive assertion of his role in finding that TF1-141 participated in active hostilities at the time.

of arms, ammunition and other logistics.[3327] As the diamond mines were highly contested and strategic locations, we find that they were potential military targets for the warring factions. The Chamber is of the view that due to the high risk of enemy attacks, armed children that had been previously trained for combat situations that were used to guard the mines were in direct danger of being caught in hostilities.[3328]

1728. We therefore find that the children who guarded the RUF camps at Benduma and Yengema in 1998 and the mines at Cyborg Pit in Kenema during the Junta period in 1997 and at Tombodu in Kono in February/March 1998 were actively participating in hostilities.

10.2.2.1.5. Children as spies

1729. The Chamber recalls that the AFRC/RUF used children in Kono District in 1998 to spy on enemy positions and to collect intelligence.[3329] The Chamber finds that these acts constituted active participation in the hostilities, as they were military in nature and directly supported the war efforts of the RUF.

10.2.2.1.6. Children as domestic labour

1730. The Chamber recalls that children under the age of 15 were used to perform domestic chores for RUF and AFRC Commanders.[3330] The Chamber is not satisfied that such conduct constitutes active participation in hostilities, as these activities were not related to the hostilities and did not directly support the military operations of the armed groups.

10.2.2.1.7. Children as bodyguards to Commanders

1731. The Chamber has found that various RUF Commanders used children under the age of 15 as bodyguards in order to protect their own safety.[3331] The Chamber is of view that such conduct is clearly related to the conduct of hostilities as, by virtue of their position and rank, Commanders were key targets for the adversary party. We note that bodyguards accompanied

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[3326] *Supra* para. 1647.
[3327] *Supra* para. 1088.
[3328] *See Lubanga* Confirmation of Charges, para. 263.
[3329] *Supra* para. 1632.
[3330] *Supra* paras 1632, 1667.
[3331] *Supra* paras 1620, 1654.

Commanders at all times, including into combat.[3332] By using the children as bodyguards, Commanders placed the children into a potential combat situation. The Chamber is therefore satisfied that the use of bodyguards constitutes active participation in the hostilities.

1732. The Chamber notes that the Indictment does not particularise the personal use of children under the age of 15 to participate in active hostilities by the Accused. The Chamber has found that depending on the circumstances the use of child soldiers as bodyguards may constitute active participation in hostilities. The Chamber has found that in the case of Sesay and Kallon their bodyguards actively participated in hostilities and that some of these bodyguards were younger than 15 years of age. Therefore the personal use of children in active participation in hostilities by the Accused is a material fact that should have been particularised in the Indictment in order to put the Accused on notice. The Chamber must therefore determine whether this defect was cured by clear, timely and consistent notice of this material fact to the Accused.

1733. The Annexes to the Prosecution's Pre-Trial Brief contain information on the use of children as bodyguards by the Accused persons. The summary of TF1-330 anticipated testimony states that he saw children as young as 10 year of age carrying guns and that they were with RUF Commanders, such as Sesay.[3333] In addition, the summary of TF1-263 contained information that children below 15 years of age were under the command of Sesay and Kallon during the attacked on Koidu Town in February 1998.[3334]

1734. The Chamber notes that these statements were disclosed prior to the start of the Prosecution case on 5 July 2004. The Chamber, therefore, finds that the defect in the Indictment was cured by timely, clear and consistent notice to the Defence.

1735. The Chamber therefore finds that the security guards between the ages of 12 and 15 who accompanied Sesay during the December 1998 attack on Koidu were Sesay's bodyguards, and were therefore actively participating in hostilities. The Chamber is satisfied that at least some of these bodyguards were under the age of 15.

[3332] *Supra* paras 1620, 1654, 1669-1670.

[3333] Annex to Prosecution Supplementary Pre-Trial Brief, Summary of witness statement of TF1-330, disclosed to all three Accused, Sesay, Kallon and Gbao on 7 February 2004.

1736. Accordingly, the Chamber also finds that the armed boys between 10 and 12 years of age who accompanied Sesay when he visited the Zambian detainees at Yengema in May 2000 were acting as his bodyguards and were therefore actively participating in hostilities.

1737. We find that the two boys who accompanied Gbao at muster parades in Kailahun Town in February 1998 were there to ensure his security and were therefore acting as his bodyguards. However, the Chamber is not satisfied beyond reasonable doubt that these bodyguards were under the age of 15, as the 12-year-old witness who observed them testified only that they appeared older than him and it would therefore be a reasonable inference that the bodyguards were aged 15 years or older.

1738. TF1-263 testified that Sesay and Kallon's bodyguards, who he had seen with them in Kono in February/March 1998, were used in combat. One of Kallon's bodyguards told TF1-263 that he was 15. TF1-263, who was 14 at the time, estimated that the other bodyguards were around 14 to 15 years of age, as they were similar in height to himself. On the basis of this evidence, the Chamber is not satisfied beyond reasonable doubt that these bodyguards were under the age of 15, as they may in fact have been 15 or older.

1739. We recall however that in certain circumstances, rather than acting as bodyguards, some of the children who accompanied Commanders were instead used to perform household chores or to carry out other tasks on behalf of their Commanders. In particular, we have found that SBUs under Sesay's command supervised work on his farms in 1996 and 1997 in Kailahun and that children who were family members of Sesay's bodyguards lived at Sesay's house in Kailahun from 1996 to 1998 and engaged in domestic chores. The Chamber is not satisfied that these activities constitute active participation in hostilities. Although some or all of these children may have been militarily trained, there is no evidence that they were used as bodyguards or in combat. The Chamber therefore finds that these children were not used to actively participate in hostilities.

1740. The Chamber has further found that after the Intervention in 1998, rebels travelling to Kono were accompanied by children between ten and 15 years of age. The evidence does not

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[3334] Annex to Prosecution Supplementary Pre-Trial Brief, Summary of witness statement of TF1-263, disclosed to Sesay on 14 November 2003, to Kallon on 10 December 2003, and to Gbao on 17 December 2003.

suggest that the children were armed or trained as fighters and therefore does not imply that these children were used as bodyguards. Although the Chamber has found that there was a widespread practice of child recruitment by the RUF and AFRC, it has also heard evidence that the rebel forces, and in particular, the AFRC forces, moved around with their families at this particular time. The children who accompanied the rebels might therefore have been the family members of the fighters within that group, as acknowledged by TF1-215 himself.[3335] The Chamber therefore finds that, on the basis of the evidence, it is not the only reasonable conclusion that these children were used to actively participate in hostilities.

1741. Further, where witnesses testified solely that they had observed Commanders with "SBUs" comprised of boys who were under the age of 15, without any further description of the activities undertaken by these SBUSs, the Chamber is not satisfied beyond reasonable doubt that such SBUs were acting as bodyguards to Commanders, as they may have simply been accompanying the Commanders or being used to perform tasks such as domestic chores. On the basis of such testimony, therefore, it is not the only reasonable conclusion that such children were actively participating in hostilities.

1742. We are therefore not satisfied beyond reasonable doubt that the SBUs seen by TF1-045 with Bockarie, Sesay and Kallon in Kailahun from 1997 until disarmament, the SBUs seen by TF1-113 with Sesay and Bockarie in Kailahun from 1996 until disarmament, the SBUs, including Morie, seen by TF1-113 with Gbao in Kailahun in 1996 to 1997, the SBUs seen by TF1-036 with Bockarie, Sesay, Kallon and Gbao in Buedu from 1998 to 1998, or the SBUs seen by TF1-141 with Kallon, Akisto and Forty Barrel in Kono in February 1998 were bodyguards. Nor are we satisfied that the boys in SBUs seen by TF1-045 with Kallon in Freetown in 1997 and in Makeni in 1999 to 2000 were bodyguards. The Chamber finds that these children were not actively participating in hostilities.

10.2.2.1.8. Children used for food finding missions

1743. The Chamber recalls that the AFRC/RUF routinely sent persons below the age of 15 years, including TF1-141 who was 12 years of age at the time, to conduct food finding missions

[3335] Transcript of 2 August 2005, TF1-215, p. 67.

in Kono District between February and April 1998.[3336] The purpose of these missions was to supply the RUF and AFRC fighters and the captured civilians who accompanied them with food while they were based in the bush. Although this activity supports the armed group in a general sense, in our view it is not directly related to the conduct of hostilities, especially as the evidence does not establish that the children openly carried arms while on such missions. The Chamber therefore finds that this activity, in and of itself, does not amount to active participation in hostilities.

10.2.2.2. Actual or Imputed Knowledge that the children were under the age of 15

1744. The Chamber recalls it's finding that the practice of using of persons under the age of 15 to participate actively in hostilities was not only organised and widespread, but deliberately executed in order to support the war effort of the RUF and AFRC forces.[3337] We recall that some of the children being used were 10 years of age. In such circumstances we find that the perpetrators had reason to know, on the basis of the physical appearance of the children, that they were under the age of 15.

1745. In respect of cases where the age of a child is not immediately obvious, we recall that many of the children used in hostilities were in units entitled "Small Boys Units" and were colloquially referred to as SBUs. We reiterate our conclusion that the consistent pattern of conduct of using persons under the age of 15 in hostilities was sufficient to put the perpetrators on notice that there is a substantial likelihood that the persons being used by them in hostilities were under the age of 15. The fact that the perpetrators may not in all cases have had actual knowledge of the ages of the persons used is immaterial given that the perpetrators had reason to know of their ages.

1746. The Chamber therefore finds that the perpetrators of these acts knew or had reason to know that the persons being used were under the age of 15.

[3336] *Supra* paras 1660, 1675. The Chamber recalls that TF1-314 testified about her participation with other children in food-finding missions in which the children were armed. However, the witness was abducted in 1994 at age 10 and she testified that it was at this age that she underwent military training. The food-finding missions in which she participated occurred shortly after the training. In light of this evidence, the Chamber finds that it is not established that these activities occurred within the Indictment period. On this basis, the Chamber need not determine whether participation in armed food-finding missions constitutes active participation in hostilities.

[3337] *Supra* paras 1698, 1714, 1727, 1729.

10.2.2.3. Findings on the Use of Child Soldiers

1747. The Chamber finds it established beyond reasonable doubt that:

(i) the RUF routinely used persons under the age of 15 to participate actively in hostilities in Kailahun District from November 1996 to 1998 and Bombali District from 1999 to September 2000;

(ii) the AFRC/RUF routinely used persons under the age of 15 to participate in combat actively in hostilities in Kono District between February and April 1998; and

(iii) the AFRC used persons under the age of 15 to participate actively in hostilities in the attack on Freetown in January 1999.

1748. The Chamber therefore finds that between November 1996 and September 2000, the RUF routinely used persons under the age of 15 to actively participate in hostilities in Kailahun, Kono and Bombali Districts, as charged in Count 12 of the Indictment.

11. Attacks Directed Against UNAMSIL Personnel (Counts 15 to 18)

11.1. Factual Findings on Attacks Directed Against UNAMSIL Personnel

11.1.1. Establishment and Role of the UNAMSIL Mission and the Disarmament Process

1749. Article XVI of the Lomé Peace Agreement of 7 July 1999 between the Government of Sierra Leone and the RUF provided for the creation of a neutral peacekeeping force to disarm all fighters belonging to the RUF, CDF, SLA and other paramilitary groups.[3338] On 22 October 1999, the Security Council, determining that "the situation in Sierra Leone [continued] to constitute a threat to international peace and security in the region," passed Resolution 1270 establishing the United Nations Mission in Sierra Leone (UNAMSIL) as a peacekeeping force.[3339] UNAMSIL replaced the existing UN presence in Sierra Leone, the United Nations Observer Mission in Sierra Leone (UNOMSIL).[3340]

1750. UNAMSIL, pursuant to its mandate, was tasked to cooperate with the Government of Sierra Leone and the RUF in the implementation of the Lomé Agreement; to assist in the disarmament, demobilisation and reintegration of combatants; to monitor adherence to the

[3338] Exhibit 304, Lomé Peace Agreement, Article XVI, para. 1 and Article XV, para. 1.
[3339] Exhibit 99, UN SC Res. 1270, 22 October 1999, preamble and para. 9.

ceasefire; and to facilitate the delivery of humanitarian assistance.[3341] Paragraph 14 of Resolution 1270 provided that, pursuant to Chapter VII of the UN Charter, in the discharge of its mandate UNAMSIL "may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence."[3342]

1751. On 7 February 2000, the Security Council passed Resolution 1289, which reaffirmed paragraph 14 of Resolution 1270 and further provided that UNAMSIL was to perform additional duties under Chapter VII, including the provision of security at key locations including sites of the disarmament, demobilisation and reintegration programme and the secure storage of weapons collected from ex-combatants.[3343]

11.1.1.1. Composition of UNAMSIL

1752. Resolution 1270 established that "the military component of UNAMSIL shall comprise a maximum of 6,000 military personnel, including 260 military observers."[3344] Resolution 1289 expanded the military component of UNAMSIL to a maximum of 11,100 military personnel.[3345]

11.1.1.1.1. KENBATT

1753. As a component of UNAMSIL, the Kenyan Battalion of peacekeepers ("KENBATT") was deployed to Makeni in Bombali District and Magburaka in Tonkolili District in January 2000.[3346]

1754. KENBATT consisted of four combat companies (Companies A,B,C and D) and the Headquarters Company. In total, KENBATT comprised 920 men, commanded by

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[3340] Exhibit 99, UN SC Res. 1270, 22 October 1999, para. 10.
[3341] Exhibit 99, UN SC Res. 1270, 22 October 1999, para. 8; Exhibit 302, Operational Order No. 3, January 2000, para. 21; First Report of the Secretary-General on the United Nations Mission in Sierra Leone, S/1999/1223, 6 December 1999, para. 1. *See also* Transcript of 28 March 2006, Leonard Ngondi, pp. 128-129.
[3342] Exhibit 99, UN SC Res. 1270, 22 October 1999, para. 14; Exhibit 302, Operational Order No. 3, January 2000, para. 23.
[3343] Exhibit 168, UN SC Res. 1289, 7 February 2000, para. 10. *See also* Transcript of 22 March 2006, Edwin Kasoma, p. 7; Transcript of 29 March 2006, Leonard Ngondi, pp. 24-25
[3344] Exhibit 99, UN SC Res. 1270, 22 October 1999, para. 9.
[3345] Exhibit 168, UN SC Res. 1289, 7 February 2000, para. 9. The strength of UNAMSIL was increased again on 19 May 2000 and 30 March 2001: *see* Exhibits 169 and 171.
[3346] Exhibit 190, Report of UNAMSIL Headquarters Board of Inquiry No. 00/19.

Lieutenant-Colonel Leonard Ngondi, now Brigadier Ngondi, from the Kenyan Army.[3347] Companies A and D and the Headquarters Company were deployed in different areas in Makeni. Companies B and C were deployed in Magburaka: B Company was deployed at the local Islamic Centre and C Company was at a location known as Waterworks, near the river.[3348]

11.1.1.1.2. UNAMSIL Military Observers

1755. The 23 Military Observers ("MILOBS")[3349] of different nationalities who were posted alongside KENBATT in Makeni comprised another component of UNAMSIL.[3350] The MILOBs' overall Commander, Brigadier-General Isaac, was based at the UN Force Headquarters in Mammy Yoko, Freetown.[3351] The MILOBs in Makeni were commanded by Lieutenant-Colonel Joseph Poraj Wilczynski, who was also in command of the Disarmament Camp and Reception Centre in Makeni.[3352] Senior MILOBs under Wilczynski's command included Lieutenant-Colonel Joseph Mendy and Major Ganese Jaganathan.[3353]

1756. In collaboration with the peacekeepers, the MILOBs assisted in the disarmament and demobilisation of the CDF, AFRC, RUF and SLA.[3354] The MILOBs also performed liaison duties, such as patrolling and escorting NGOs,[3355] monitoring RUF activities and submitting reports.[3356]

11.1.1.1.3. ZAMBATT

1757. The Zambian Battalion ("ZAMBATT"), also a component of UNAMSIL, was composed of more than 800 men, was organised into companies of over 100 men, a logistics company of

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[3347] Transcript of 28 March 2006, Leonard Ngondi, pp. 126-127; Transcript of 30 March 2006, Leonard Ngondi, p. 98.
[3348] Transcript of 29 March 2006, Leonard Ngondi, pp. 2-5, 36, 39; Transcript of 30 March 2006, Leonard Ngondi, p. 6.
[3349] Transcript of 20 June 2006, Ganese Jaganathan, p. 15.
[3350] Exhibit 108, Additional Information provided by witness TF1-044, para. 1.
[3351] Transcript of 26 June 2006, Joseph Mendy, pp. 79-81. Transcript of 27 June 2006, Joseph Mendy, pp. 101-108. Transcript of 28 June 2006, Joseph Mendy, pp. 12-13.
[3352] Transcript of 27 June 2006, Joseph Mendy, pp. 101-108; Transcript of 26 June 2006, Joseph Mendy, p. 86; Exhibit 108, Additional Information provided by witness TF1-044, para. 1. Transcript of 28 June 2006, Joseph Mendy, pp. 12-13.
[3353] Transcript of 26 June 2006, Joseph Mendy, p. 79; Transcript of 27 June 2006, Joseph Mendy, pp. 101-108; Transcript of 20 June 2006, Ganese Jaganathan, p. 5.
[3354] Transcript of 20 June 2006, Ganese Jaganathan, p. 7; Transcript of 28 June 2006, Joseph Mendy, p. 19.
[3355] Transcript of 20 June 2006, Ganese Jaganathan, p. 7.

about 150 men and a mechanised platoon. The commanding officer of ZAMBATT was Lieutenant-Colonel Edwin Kasoma from the Zambian Army. The ZAMBATT peacekeepers arrived in Freetown, Sierra Leone in late April 2000 and their initial assignment was to deploy in Koidu in Kono District. However, on 1 May 2000 Kasoma was instead ordered to deploy to Makeni to reinforce KENBATT.[3357]

11.1.1.1.4. Other UNAMSIL Components

1758. The UNAMSIL force also included, *inter alia*, peacekeeping units from Guinea (GUINBATT) and India (INDBATT) deployed in other parts of the country. The Indian contingent included a Quick Reaction Company (QRC).[3358]

11.1.1.2. UNAMSIL Military Strength and Capability

1759. UNAMSIL peacekeepers were lightly armed. They did not possess the military capacity, even taking into account their ability to obtain reinforcements, to cause significant damage to the RUF if open combat had arisen.[3359] The peacekeepers in and around Makeni also lacked logistical support in relation to transport and radio communication.[3360] The MILOBs were unarmed, and did not even carry knives whilst on patrol.[3361]

1760. Prior to their arrival in Sierra Leone, peacekeepers received training on their mandate which included briefings on peacekeeping deployment and the instruction that minimum force was to be used and only to protect their own lives when threatened.[3362]

11.1.1.3. The Disarmament Process

1761. By April 2000 there were Disarmament, Demobilisation and Reintegration (DDR) programmes throughout the West of Sierra Leone (Freetown, Lunsar, Lungi and Port Loko), as

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[3356] Exhibit 108, para. 1. Transcript of 28 June 2006, Joseph Mendy, p. 18.
[3357] Transcript of 22 March 2006, Edwin Kasoma, pp. 3-7. *Infra* para. 1831.
[3358] Exhibit 302, Operational Order No. 3, January 200, paras 22, 36.
[3359] Transcript of 20 June 2006, Ganese Jaganathan, pp. 109-116. *See also* Transcript of 7 March 2008, DIS-310, pp. 19-20 (CS); Transcript of 19 May 2008, Mohammed Abdulahi Garbah, p. 78 (CS).
[3360] Transcript of 20 June 2006, Ganese Jaganathan, p. 70.
[3361] Transcript of 26 June 2006, Joseph Mendy, p. 79.
[3362] Transcript of 22 March 2006, Edwin Kasoma, p. 7.

well as in the East (Daru, Bo and Mile 91) and in the South. Programmes in the North of the country were few.[3363]

1762. The DDR programme required fighters from all warring factions to report on a voluntary basis, with their weapons and ammunition, to reception centres established for this purpose. The fighters would then be escorted by peacekeepers to a nearby DDR camp. At the camp the fighters would be handed over to personnel appointed by the Government of Sierra Leone who would attend to the requisite documentation and conduct a medical screening.[3364] The fighters were required to remain at the camp for several weeks to undergo demobilisation training. At the conclusion of this process, the disarmed and demobilised fighters would receive 300 US dollars in local currency. [3365]

1763. Ceasefire Monitoring Committees were also set up in accordance with the Lomé Peace Agreement, comprising representatives from UNAMSIL, the RUF, the CDF and local communities.[3366] Their primary purpose was to resolve any conflicts between the RUF and the CDF.[3367]

11.1.1.4. RUF Grievances Regarding Disarmament

1764. The plan for disarmament was for the RUF leadership to ensure first the disarmament of the RUF rank-and-file and the disarmament of the leaders would follow, with the senior Commanders in Makeni being the last to disarm.[3368] By January 2000, 4,625 fighters from various groups had been disarmed, from an estimated total of 45,000 fighters from all sides. The UN assessed this response to the DDR programme as "lukewarm to moderate,"[3369] observing that mutual distrust among all factions was hampering the process.[3370]

[3363] Transcript of 19 May 2008, Mohammed Abdulahi Garbah, p. 23 (CS); Transcript of 20 June 2006, Ganese Jaganathan, p. 57.
[3364] Transcript of 29 March 2006, Leonard Ngondi, p. 24; Transcript of 26 June 2006, Joseph Mendy, pp. 83-85; Transcript of 20 June 2006, Ganese Jaganathan, pp. 7-8.
[3365] Transcript of 20 June 2006, Ganese Jaganathan, p. 19. The period of encampment was reduced in April 2000 from six weeks to three weeks in order to 'fast-track' the DDR programme. In addition, the Government began paying transitional allowances to fighters prior to completion of the process: Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, pp. 3575-3576.
[3366] Transcript of 26 June 2006, Joseph Mendy, pp. 81-83.
[3367] Transcript of 26 June 2006, Joseph Mendy, pp. 81-83.
[3368] Transcript of 11 March 2008, Daniel Opande, p. 126.
[3369] Exhibit 302, Operational Order No. 3, January 2000, paras. 3, 6.
[3370] Exhibit 302, Operational Order No. 3, January 2000, para. 8.

1765. In the months leading up to May 2000, Sankoh repeatedly expressed his dissatisfaction with the disarmament process. During meetings with UNAMSIL officials, Sankoh complained that his men were being mistreated and that RUF disarmament was the only aspect of the Lomé Agreement being implemented, while no progress was made on other terms such as the integration of RUF members into key government positions.[3371] Sankoh accused UNAMSIL of focusing overly on disarmament to the detriment of the peace process as a whole, and claimed that if disarmament was to continue, Kabbah had to implement the contents of the Lomé Agreement.[3372] Moreover, Sankoh complained that the UNAMSIL Force Commander, Major-General Jetley, was forcing the RUF to disarm.[3373]

1766. In some parts of Sierra Leone, rebels were so resistant towards disarmament that even orders to abide by it from Sankoh were ineffective. At times, stand-offs occurred between UNAMSIL and the RUF.[3374] Throughout March 2000, RUF fighters obstructed the deployment of UNAMSIL to Kono District.[3375]

1767. On 28 April 2000, a dispute erupted in Freetown between ECOMOG troops and AFRC fighters over a stolen vehicle, in which one AFRC fighter was killed and another seriously wounded. UNAMSIL peacekeepers succeeded in preserving calm in Freetown following this incident. On 1 May 2000, however, Sankoh gave a press conference in Freetown alleging that UNAMSIL peacekeepers had shot the AFRC fighters. The UN Secretary General shortly afterwards assessed that '[t]his inciting statement' led to an increase in tension between the RUF and UNAMSIL throughout the country.[3376] On 30 April 2000, five UNAMSIL peacekeepers were forcibly disarmed and one of them was shot and seriously wounded by a group of fighters presumed to be AFRC members in the Okra Hills in Port Loko District.[3377]

[3371] Transcript of 23 May 2007, Issa Sesay, p. 44.
[3372] Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 31-37; Transcript of 25 May 2007, Issa Sesay, pp. 42, 44. *See also* Exhibit 323, Letter from the RUF Defence Headquarters Makeni to the UN Secretary General His Excellency Mr Kofi Annan, dated 6 April 2001, p. 8.
[3373] Transcript of 25 May 2007, Issa Sesay, p. 42.
[3374] Transcript of 20 June 2006, Ganese Jaganathan, p. 64.
[3375] Exhibit 381, Fourth Secretary-General Report on UNAMSIL, para. 3.
[3376] Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, p. 3575.
[3377] Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, p. 3575.

1768. In a radio message to Sesay on 3 May 2000, copied to all RUF radio stations, Sankoh claimed that the UNAMSIL Field Commander had stated on Radio France International that they would disarm all RUF fighters by force, commencing the next day.[3378] This message fuelled concerns within the RUF that UNAMSIL was going to use arms against them.[3379] This indicates, in the Chamber's view, that some RUF fighters may have perceived UNAMSIL's actions in disarming their men as a threat or hostile move, the voluntary nature of the programme notwithstanding.

1769. During training prior to their arrival in Sierra Leone, peacekeepers were informed that the RUF were dissatisfied with the disarmament process, but that it was believed that in the long term the RUF would comply peaceably with its requirements.[3380]

11.1.1.5. Disarmament in Magburaka and Makeni

11.1.1.5.1. UNAMSIL facilities in Makeni and Magburaka

1770. After the RUF hierarchy in Freetown and UNAMSIL agreed on the date of disarmament in the Makeni area, DDR camps were established in the Makeni and Magburaka areas.[3381] Each DDR camp was served by a reception centre. The Reception Centre in Makeni served the DDR camp in nearby at Makump. The Reception Centre in Magburaka, located at the Islamic Centre, served the DDR camp outside Magburaka at Waterworks.[3382] These facilities were inaugurated on 17 April 2000.[3383]

[3378] Exhibit 34, RUF Radio Log, p. 8104; Transcript of 26 July 2005, TF1-360, pp. 93-94 (CS); Exhibit 212, RUF Radio Log Book, p. 28070. The Chamber notes that in Exhibit 34, the date of the message is recorded as '3/4/2000.' The Chamber is satisfied, given that messages in the logbook are consistently ordered chronologically and having regard to the dates of the previous and subsequent messages, as well as the message in Exhibit 212, that the recorded date is an error and the message was in fact transmitted on 3 May 2000.

[3379] Transcript of 26 July 2005, TF1-360, pp. 94-95 (CS).

[3380] Transcript of 28 June 2006, Joseph Mendy, pp. 55-60.

[3381] Transcript of 20 June 2006, Ganese Jaganathan, pp. 95-96; Transcript of 21 June 2006, Ganese Jaganathan, p. 31; Transcript of 26 June 2006, Joseph Mendy, pp. 81-83, 85-87; Transcript of 29 June 2006, Joseph Mendy, p. 10.

[3382] The DDR camp was at Robol Junction, but this location was referred to as Waterworks: *see* Transcript of 29 March 2006, Leonard Ngondi, pp. 2-5, 36, 39; Transcript of 30 March 2006, Leonard Ngondi, p. 6. The reception centre was at a separate location to the DDR camp in order to divide fighters at the disarmament and demobilisation stages of the process: *see* Transcript of 21 June 2006, Ganese Jaganathan, pp. 8-9.

[3383] Transcript of 20 June 2006, Ganese Jaganathan, pp. 95-96; Transcript of 21 June 2006, Ganese Jaganathan, p. 31; Transcript of 26 June 2006, Joseph Mendy, pp. 81-83, 85-87; Transcript of 29 June 2006, Joseph Mendy, p. 10.

1771. Makeni and Magburaka were RUF controlled areas.[3384] By May 2000, relations between UNAMSIL and the RUF in Makeni and Magburaka were difficult and the disarmament programme was the key area of contention.

11.1.1.5.2. Meetings between the RUF and UNAMSIL

1772. In early 2000, Sesay met with UNAMSIL Force Commander Jetley in Magburaka to discuss disarmament in Makeni.[3385]

1773. On 26 February 2000, one day after he assumed command of KENBATT, Ngondi met Gbao and Kallon for the first time in the Magburaka area.[3386] In his capacity as the KENBATT Commander responsible for Makeni and Magburaka, Ngondi met many times with RUF Commanders.[3387] The Commander he met most frequently was Gbao, followed by Kallon.[3388] At their meetings, the RUF and UNAMSIL discussed the DDR programme, freedom of movement and humanitarian aid.[3389] RUF representatives also attended regular meetings of the local Ceasefire Monitoring Committee.[3390]

1774. Ngondi met with Sesay several times, with their first meeting on 12 April 2000 at KENBATT Battalion Headquarters in Makeni.[3391] At this meeting, Ngondi explained to Sesay that UNAMSIL had deployed in Makeni to cooperate and that cooperation was necessary in order to bring peace and stability to Sierra Leone.[3392] The RUF had confiscated weapons from KENBATT prior to Ngondi's arrival and Ngondi informed Sesay that these weapons needed to be returned. Ngondi emphasised the need for the RUF to work diligently to ensure that they were at the forefront of the implementation of the DDR programme.[3393]

[3384] Exhibit 302, Operational Order No 3, January 2000, para. 13; Transcript of 29 March 2006, Leonard Ngondi, p. 6.
[3385] Transcript of 23 May 2007, Issa Sesay, p. 34.
[3386] Transcript of 29 March 2006, Leonard Ngondi, p. 8.
[3387] Transcript of 29 March 2006, Leonard Ngondi, pp. 6, 9.
[3388] Transcript of 29 March 2006, Leonard Ngondi, p. 10.
[3389] Transcript of 29 March 2006, Leonard Ngondi, pp. 9-10.
[3390] Transcript of 26 June 2006, Joseph Mendy, pp. 81-83; Transcript of 15 April 2008, Morris Kallon, p. 47.
[3391] Transcript of 29 March 2006, Leonard Ngondi, pp. 10-12.
[3392] Transcript of 29 March 2006, Leonard Ngondi, p. 11.
[3393] Transcript of 29 March 2006, Leonard Ngondi, pp. 11-12.

1775. The second time that Ngondi met with Sesay was on 14 April 2000 at Teko Barracks, the RUF residential base in Makeni.[3394] Ngondi requested the meeting after he discovered, on 13 April 2000, that the RUF had impeded Caritas in its work to identify child combatants who had been abducted by the RUF to return them to their families.[3395] In this meeting, Sesay indicated to Ngondi that he was concerned that "their" fighters were being removed from the territory by Caritas.[3396]

1776. In Ngondi's view, this attitude indicated that the RUF did not properly understand the work of Caritas. He subsequently convened several meetings between the RUF, UNAMSIL and Caritas, to persuade the RUF to permit Caritas to continue its operations.[3397] These meetings were attended by, amongst others, Gbao and Kallon, TF1-174 and KENBATT officers Ngondi and Major Maroa.[3398] In the third such meeting, Kallon stated that "in three weeks time the world would know what the RUF would do in Sierra Leone."[3399]

11.1.1.5.3. Gbao at the Makeni Reception Centre on 17 April 2000

1777. The DDR programme did not commence on 17 April 2000 as planned because the RUF refused to take part in the programme.[3400] Instead, on that day, the RUF demonstrated around Makeni in groups of 30 to 50 fighters.[3401]

1778. In addition, a group of 25 to 30 armed rebels led by Gbao arrived at the Reception Centre in Makeni, left their vehicles and formed an extended line facing the Centre.[3402] Gbao, who was unarmed, "stormed" into the Centre accompanied by several armed fighters and told the peacekeepers that if they did not dismantle all the tents, he would burn them with the

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[3394] Transcript of 29 March 2006, Leonard Ngondi, p. 12; Transcript of 20 June 2006, Ganese Jaganathan, p. 30.
[3395] Transcript of 29 March 2006, Leonard Ngondi, pp. 12-13.
[3396] Transcript of 29 March 2006, Leonard Ngondi, p. 13.
[3397] Transcript of 29 March 2006, Leonard Ngondi, pp. 14-15.
[3398] Transcript of 21 March 2006, TF1-174, pp. 50-56 (CS); Transcript of 17 June 2008, DAG-111, pp. 60-62.
[3399] Transcript of 21 March 2006, TF1-174, p. 55 (CS).
[3400] Transcript of 29 March 2006, Leonard Ngondi, pp. 16-19.
[3401] Transcript of 29 March 2006, Leonard Ngondi, pp. 16-19; Transcript of 5 June 2008, Mohammed Abdulahi Garbah, p. 104 (CS); Transcript of 10 July 2006, TF1-041, pp. 70-71 (CS); Transcript of 18 July 2006, TF1-041, pp. 28-36 (CS).
[3402] Transcript of 29 June 2006, Joseph Mendy, p. 10-11; Transcript of 26 June 2006, Joseph Mendy, pp. 85-87; Transcript of 20 June 2006, Ganese Jaganathan, pp. 16-18; Transcript of 21 June 2006, Ganese Jaganathan, pp. 29-30.

peacekeepers inside.[3403] Ngondi, Wilczynski and Major Musengeh went to meet Gbao and he told them that the RUF disagreed with the manner in which the Lomé Agreement was being implemented. Eventually, Gbao and his men agreed to forward their grievances to their national leadership and not to close down the Reception Centre since disarmament was voluntary.[3404]

11.1.1.5.4. Ngondi meets with Sesay on 20 April 2000 at Teko Barracks

1779. On 20 April 2000, Ngondi went to see Sesay at Teko Barracks in Makeni to enquire whether the RUF had received any direction from its national leadership on their grievances in relation to disarmament. Sesay told Ngondi that he had not been given any instructions.[3405] Ngondi understood from the meeting that Sesay was displeased with the entire disarmament process. At one point during their meeting Sesay summoned a radio operator and ordered that disarmament was to be stopped at Sanguema.[3406]

11.1.1.5.5. RUF fighters afraid to disarm in Makeni

1780. In the second half of April 2000, some RUF fighters turned up voluntarily at the DDR camp in Makeni to disarm. They informed the MILOBs that the RUF leadership had issued warnings not to comply with the disarmament process at that time.[3407] MILOBs further became aware that some fighters wanted to disarm, but they were afraid of the RUF High Command.[3408] TF1-071 was told at about this time that Gbao had stated that any fighter who was found disarming secretly would face execution.[3409]

11.1.1.5.6. Kallon at Makump DDR camp on 28 April 2000

[3403] Transcript of 20 June 2006, Ganese Jaganathan, p. 16; Transcript of 21 June 2006, Ganese Jaganathan, p. 30;Transcript of 29 June 2006, Joseph Mendy, pp. 10-11.
[3404] Transcript of 26 June 2006, Joseph Mendy, p. 86; Transcript of 29 March 2006, Leonard Ngondi, pp. 16-19; Transcript of 18 July 2006, TF1-041, pp. 37-49 (CS).
[3405] Transcript of 29 March 2006, Leonard Ngondi, p. 20. The Chamber presumes that the RUF "national leadership" refers to Sankoh, who remained the Leader of the RUF at that time.
[3406] Transcript of 29 March 2006, Leonard Ngondi, pp. 20-22. There is no evidence as to whether this order was subsequently transmitted and if so, what followed.
[3407] Transcript of 20 June 2006, Ganese Jaganathan, p. 94.
[3408] Transcript of 29 March 2006, Leonard Ngondi, p. 23; Transcript of 29 June 2006, Joseph Mendy, p. 31.
[3409] Transcript of 24 January 2005, TF1-071, pp. 4-6.

1781. On 28 April 2000, Kallon travelled from Magburaka to the Makump DDR Camp accompanied by, among others, TF1-041.[3410] While at the camp, Kallon criticised the workers who were preparing beds intended for ex-combatants, stating that the camp "was not meant for pigs, but for human beings."[3411] Kallon then approached the camp Commander and said: "[t]he tents that you have made for the ex-combatants will be pulled down within 72 hours."[3412]

11.1.1.5.7. Disarmament of ten fighters in Makeni

1782. Over the course of 27 and 28 April 2000, a total of ten RUF fighters came to the Reception Centre in Makeni and handed in their weapons. Two of the fighters brought their weapons concealed in a blanket.[3413] However, none of the ten disarmed fighters agreed to proceed to the DDR Camp for demobilisation, as they wanted to wait for approval from their local Commanders.[3414]

1783. On 30 April 2000, six of these ten fighters came to the Reception Centre and aggressively demanded their money. Jaganathan explained that the 300 US dollars would be given to them once they had completed the entire DDR process. The six fighters agreed to come back on the following day.[3415]

11.1.2. Assault and abductions of UNAMSIL personnel on 1 and 2 May 2000

11.1.2.1. Gbao attends Makump DDR Camp

1784. On 1 May 2000, the ten fighters who had handed in their weapons arrived at the Reception Centre and were escorted to and registered at the DDR Camp.[3416] The ex-combatants were then given their money and released.[3417]

[3410] Transcript of 27 June 2006, Joseph Mendy, p. 8; Transcript of 26 June 2006, Joseph Mendy, p. 96; Transcript of 22 July 2005, TF1-360, p. 5 (CS); Transcript of 10 July 2006, TF1-041, p. 68 (CS); Transcript of 15 April 2008, Morris Kallon, pp. 61-62; Transcript of 29 April 2008, DMK-108, pp. 66-67, 72; Transcript of 1 May 2008, DMK-095, p. 41.

[3411] Transcript of 22 July 2005, TF1-360, p. 5 (CS). *See also* Transcript of 10 July 2006, TF1-041, p. 69 (CS); Transcript of 15 April 2008, Morris Kallon, pp. 62-64; Transcript of 29 April 2008, DMK-108, p. 71; Transcript of 1 May 2008, DMK-095, pp. 41-42.

[3412] Transcript of 26 June 2006, Joseph Mendy, p. 96; Transcript of 27 June 2006, Joseph Mendy, p. 8; Transcript of 10 July 2006, TF1-041, p. 69 (CS); Transcript of 22 July 2005, TF1-360, p. 5 (CS).

[3413] Transcript of 20 June 2006, Ganese Jaganathan, p. 18; Transcript of 29 March 2006, Leonard Ngondi, p. 23.

[3414] Transcript of 20 June 2006, Ganese Jaganathan, p. 19; Transcript of 22 July 2005, TF1-360, p. 4 (CS).

[3415] Transcript of 20 June 2006, Ganese Jaganathan, pp. 19-20.

[3416] Transcript of 29 March 2006, Leonard Ngondi, p. 25; Transcript of 20 June 2006, Ganese Jaganathan, p. 20; Transcript of 26 June 2006, Joseph Mendy, p. 98.

1785. At about 1:45pm on 1 May 2000, one of the MILOBs at the Makump DDR camp contacted Jaganathan, who was at the reception centre in Makeni, and informed him that 30 to 40 armed RUF fighters were standing outside the camp. The RUF rebels were armed with RPGs, AK47s and M3 rifles. Jaganathan and his colleague Major Salahuedin immediately departed for Makump.[3418]

1786. Upon their arrival at the Makump DDR camp at about 2:20pm, Jaganathan observed Gbao with the armed fighters standing outside the camp on the main road, facing the entrance to the camp. Jaganathan knew Gbao as they had met on three prior occasions.[3419] Gbao was not armed, but he was shirtless and in his left hand was a liquor bottle that was almost empty. He appeared drunk as he was swaying and his eyes were bloodshot.[3420] Jaganathan descended from the vehicle and approached Gbao while Salahuedin drove inside the camp. Jaganathan requested Gbao to explain his problems and Gbao responded: "[g]ive me back my five men and their weapons, otherwise I will not move an inch from here."[3421] Jaganathan attempted further discussion but did not make any progress in resolving the problem.[3422]

1787. Major Bosco Odhiambo, the second-in-command of KENBATT, then arrived and also attempted unsuccessfully to communicate with Gbao.[3423] As Gbao did not appear willing to enter into discussions, Odhiambo stated that he would request one of his officers, Major Maroa, to attend the camp to resolve the problem. Odhiambo departed and Jaganathan excused himself from Gbao and walked inside the camp and stood with his colleague Salahuedin.[3424]

1788. Maroa was at that time at the KENBATT Headquarters in Makeni with the KENBATT Commander Ngondi. Upon being informed of the situation, Ngondi ordered Maroa to attend the DDR camp and attempt to negotiate with Gbao. Ngondi told Maroa that if Gbao was not

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[3417] Transcript of 29 March 2006, Leonard Ngondi, p. 25.
[3418] Transcript of 20 June 2006, Ganese Jaganathan, p. 22.
[3419] Transcript of 21 June 2006, Ganese Jaganathan, pp. 12-14.
[3420] Transcript of 20 June 2006, Ganese Jaganathan, pp. 20-22; Transcript of 21 June 2006, Ganese Jaganathan, pp. 13-14, 16, 18. Jaganathan estimated that he had met Gbao on three occasions: Transcript of 21 June 2006, p. 29.
[3421] Transcript of 20 June 2006, Ganese Jaganathan, p. 22. *See generally* Transcript of 21 March 2006, TF1-174, pp. 61-62 (CS).
[3422] Transcript of 20 June 2006, Ganese Jaganathan, p. 22.
[3423] Transcript of 20 June 2006, Ganese Jaganathan, pp. 22-23.
[3424] Transcript of 20 June 2006, Ganese Jaganathan, p. 23.

satisfied, Maroa should tell Gbao to come to KENBATT Headquarters to discuss the matter with him.[3425]

11.1.2.2. Kallon arrives at Makump DDR Camp

1789. When Maroa arrived at Makump DDR camp, he reported to Ngondi via radio that:

> [...] Gbao was very wild [...] and he was demanding that we must give them their ten combatants and their ten rifles because that was RUF territory. He was demanding to a certain extent to close down the entire exercise and even the camp. And he was calling more combatants who were assembled within the DDR camp.[3426]

1790. At about 2:50pm, following Maroa's arrival, a Mercedes Benz car arrived at the entrance of the DDR camp from the direction of Makeni. Kallon was one of the men in the vehicle. A burst of automatic fire came out from the rear of the vehicle before its occupants, armed with AK47s, alighted.[3427] Maroa reported to Ngondi that Kallon was enraged: "they had thought Gbao was wild, but Kallon - Gbao was now trying to cool down Kallon because he was even firing shots on the ground between him and the UN people."[3428]

1791. Kallon rushed inside the camp towards Jaganathan and Salahuedin.[3429] Gbao remained outside the camp.[3430] Kallon punched Salahuedin in the face, shouting "white man, I'll kill you".[3431] He then tried to stab Salahuedin with a bayonet affixed to a rifle. Eventually, the peacekeepers managed to take and hide Salahuedin.[3432] After Salahuedin had left, Kallon pointed his finger at Jaganathan and ordered his men to arrest him. A group of armed fighters

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[3425] Transcript of 29 March 2006, Leonard Ngondi, p. 28.
[3426] Transcript of 29 March 2006, Leonard Ngondi, p. 28.
[3427] Transcript of 21 June 2006, Ganese Jaganathan, p. 18; Transcript of 20 June 2006, Ganese Jaganathan, pp. 23-24. The Chamber notes that there is corroborating evidence to indicate that Kallon possessed or had access to a Mercedes-Benz car: *see* radio message from Sesay to Kallon, of 20 or 21 March 2000 [precise date not noted], asking Kallon to come and collect him with the 'Benz car or the jeep': Exhibit 212, RUF Radio Log Book, p. 28045.
[3428] Transcript of 29 March 2006, Leonard Ngondi, p. 29; *see also* Transcript of 31 March 2006, p. 27, where Ngondi agreed that the report he received from Maroa was that Gbao attempted to pacify Kallon.
[3429] Transcript of 29 March 2006, Leonard Ngondi, p. 29; Jaganathan had not met Kallon before, but Maroa later identified Kallon to him: Transcript of 20 June 2006, Ganese Jaganathan, pp. 24-25. *See also* Exhibit 212, RUF Radio Log Book, p. 28067.
[3430] Transcript of 21 June 2006, Ganese Jaganthan, pp. 15, 22-23.
[3431] Transcript of 20 June 2006, Ganese Jaganathan, p. 25.
[3432] Transcript of 20 June 2006, Ganese Jaganathan, pp. 24-25; Transcript of 19 May 2008, Mohammed Abdulahi Carbah, pp. 122-123 (CS).

hit Jaganathan with rifle butts and kicked and punched him.[3433] One of the rebels pulled out a pistol and put it to Jaganathan's head, saying "you are a dead man."[3434]

1792. The rebels then dragged Jaganathan outside the DDR camp to Kallon's Mercedes Benz.[3435] Gbao, now armed with an AK47 and "all of a sudden sobered up," was standing at the rear of the vehicle. Jaganathan tried to speak to Gbao, but Gbao did not make any move.[3436]

1793. Jaganathan was then pushed into the rear seat of the Mercedes Benz and two escorts, one armed with an RPG and another with an AK47, sat on either side of him.[3437] Kallon sat in the front passenger seat and told his men to move on.[3438] While travelling, Kallon again threatened Jaganathan, stating "I'm going to kill you today, bury your body in Sierra Leone, and you will not have time to say goodbye to your family."[3439]

1794. After a few kilometres, Kallon's car stopped. Kallon then ordered Jaganathan to get out of the car and stand under a tree. Kallon continued to threaten him, asserting that the UN peacekeepers were causing trouble.[3440]

11.1.2.3. Abduction of Maroa's group

1795. Maroa decided to follow Kallon and attempt to talk to him to negotiate the release of Jaganathan. Maroa left the camp, accompanied by three other UNAMSIL personnel, and they drove towards Makeni.

1796. When Maroa's UN Land Rover approached the area where Jaganathan was standing under the tree, Kallon ordered the rebels to open fire at it. The rebels did so, without first attempting to stop the car. The vehicle's four occupants were captured, forcibly disarmed and brought to Kallon. Five people, including Jaganathan, were now with Kallon under the tree.

[3433] Transcript of 20 June 2006, Ganese Jaganathan, pp. 25-26; Transcript of 29 March 2006, Leonard Ngondi, p. 29.
[3434] Transcript of 20 June 2006, Ganese Jaganathan, p. 26.
[3435] Transcript of 20 June 2006, Ganese Jaganathan, p. 26; Transcript of 29 March 2006, Leonard Ngondi, p. 29.
[3436] Transcript of 20 June 2006, Ganese Jaganathan, p. 26; Transcript of 21 June 2006, Ganese Jaganathan, p. 24; Transcript of 22 July2005, TF1-360, pp. 5-6 (CS).
[3437] Transcript of 20 June 2006, Ganese Jaganathan, p. 26.
[3438] Transcript of 20 June 2006, Ganese Jaganathan, p. 26; Transcript of 19 May 2008, Mohammed Abdulahi Gadbah, p. 124 (CS).

1797. Kallon then ordered Jaganathan into the Mercedes Benz again, and they drove towards Makeni. The car passed through two RUF checkpoints and Kallon instructed his men to "[s]top all UN vehicles".[3441] Several rebels were left behind to look after Maroa and the other three peacekeepers.[3442]

1798. Jaganathan was taken to Teko Barracks in Makeni.[3443] Upon arrival there, Kallon walked to the communications centre, took the receiver and gave the following messages: "The UN have seriously attacked our position and taken five of our men and their weapons, but I have one"; "[a]ll stations, red alert, red alert, red alert".[3444]

1799. While at the communication centre, Jaganathan saw Maroa and the other three peacekeepers arriving in a Land Rover, escorted by Gbao.[3445] Gbao took three rifles out of the boot of his car.[3446] Maroa was bleeding from his mouth and the other three peacekeepers were limping.[3447]

1800. Meanwhile, Ngondi had decided to attempt to intercept Kallon on his way from Makump to Makeni. However, when he left his headquarters in Makeni he saw vehicles being loaded with RUF fighters and driving towards Makump. In light of this situation, Ngondi returned to his headquarters.[3448]

1801. When he arrived back at the headquarters, Ngondi received instructions from Force Headquarters in Freetown that negotiations with the RUF should continue so the situation did not escalate and turn hostile. Ngondi was confident that he would be able to reach an agreement with Sesay, Kallon, Gbao and the others, as their discussions had been successful in the past.[3449]

[3439] Transcript of 20 June 2006, Ganese Jaganathan, p. 27.
[3440] Transcript of 20 June 2006, Ganese Jaganathan, pp. 27-28, 53.
[3441] Transcript of 20 June 2006, Ganese Jaganathan, p. 30.
[3442] Transcript of 20 June 2006, Ganese Jaganathan, pp. 29-30; Transcript of 29 March 2006, Leonard Ngondi, pp. 29-30..
[3443] Transcript of 20 June 2006, Ganese Jaganathan, p. 30.
[3444] Transcript of 20 June 2006, Ganese Jaganathan, p. 31; Transcript of 26 July 2005, TF1-360, p. 85 (CS).
[3445] Transcript of 20 June 2006, Ganese Jaganathan, p. 31; Transcript of 29 March 2006, Leonard Ngondi, p. 32.
[3446] Transcript of 20 June 2006, Ganese Jaganathan, p. 31.
[3447] Transcript of 20 June 2006, Ganese Jaganathan, p. 31.
[3448] Transcript of 29 March 2006, Leonard Ngondi, p. 30.
[3449] Transcript of 29 March 2006, Leonard Ngondi, pp. 30-31.

1802. Ngondi continued to receive reports that RUF fighters were gathering around the DDR camp. However, after Kallon and Gbao had departed, the overall situation was no longer hostile.[3450]

11.1.2.4. Abduction of Mendy and Gjellesdad

1803. On the afternoon of 1 May 2000 the MILOBs, knowing that the RUF were holding Jaganathan, decided to send two of their personnel, Lieutenant-Colonel Mendy and Commander Gjellesdad, to talk to the RUF and secure Jaganathan's release.[3451]

1804. Mendy and Gjellesdad went first to the headquarters of the security units in Makeni and requested to speak to Gbao, whom they knew as the "chief security officer" of the RUF. They were told to visit the RUF task force office. Arriving at the roundabout outside the task force office, Mendy and Gjellesdad encountered Kallon and approximately 50 armed men and women.[3452] Mendy recognised Kallon as the same person he had seen at the DDR camp on 28 April 2000.[3453] One of the RUF fighters confiscated Gjellesdad's walkie-talkie and Kallon ordered Gjellesdad to hand over the keys to their vehicle.[3454]

1805. Kallon asked Mendy and Gjellesdad why the MILOBs had opened fire on their men and why they were disarming them. Mendy replied that the MILOBs did not carry arms and that the approval for the DDR process had been given by the Government, UNAMSIL and senior RUF officials.[3455] Mendy further explained to Kallon that the RUF knew about the Reception Centre and the DDR camp and that the demobilisation process was voluntary.[3456]

1806. Kallon stated that Gjellesdad would be held captive, but Mendy could go back to his team site as they were only interested in dealing with "white people."[3457] Mendy reminded

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[3450] Transcript of 29 March 2006, Leonard Ngondi, p. 30.
[3451] Transcript of 29 March 2006, Leonard Ngondi, pp. 32-33; Transcript of 27 June 2006, Joseph Mendy, pp. 4-5. *See also* Exhibit 109, Report on the RUF Rebel Attack on UNAMSIL Officers in Makeni Team Site, dated 27 November 2000, for a detailed account by Mendy of his abduction.
[3452] Transcript of 27 June 2006, Joseph Mendy, pp. 4, 6, 9; Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 124-125 (CS).
[3453] Transcript of 27 June 2006, Joseph Mendy, p. 8.
[3454] Transcript of 27 June 2006, Joseph Mendy, p. 6.
[3455] Transcript of 27 June 2006, Joseph Mendy, pp. 6-7.
[3456] Transcript of 27 June 2006, Joseph Mendy, p. 7.
[3457] Transcript of 27 June 2006, Joseph Mendy, p. 7; Exhibit 109, Report on the RUF Rebel Attack on UNAMSIL Officers in Makeni Team Site, dated 27 November 2000, p. 21016. Gjellesdad was Scandinavian, while Mendy was a Gambian national.

Kallon that he had come to find Jaganathan and stated that he was not going to return to the site.[3458] Kallon gave Gjellesdad back the keys of the UN vehicle and told Mendy and Gjellesdad that his men would escort them.[3459] They were then taken to Teko Barracks[3460] and brought to the building where Jaganathan, Maroa and the other three peacekeepers were being held captive.[3461]

11.1.2.5. Abduction of Odhiambo's group

1807. In the morning of 2 May 2000, Ngondi still believed the situation could be resolved by contacting the RUF High Command.[3462] Ngondi accordingly dispatched Odhiambo and three other peacekeepers to Teko Barracks. The purpose of their mission was to contact Sesay, Kallon, Gbao or any member of the RUF High Command whom they knew, to give them the following message: that the events that had occurred were uncalled for and not in the interests of peace; that holding UN peacekeepers as hostages is illegal and not in the interests of peace, and therefore that the peacekeepers should be unconditionally released; and that if there were issues that the RUF did not understand, they should come to Ngondi's headquarters to discuss them.[3463] In order to demonstrate their peaceful intent, the group dispatched did not carry any weapons.[3464]

1808. Upon arrival at Teko Barracks, the group was taken to the same room where the other UNAMSIL personnel were being held. At the time, there were 11 peacekeepers in the room: nine KENBATT personnel and two MILOBs.[3465] Ngondi attempted to call Odhiambo's group by radio, but was unable to establish contact.[3466]

11.1.2.6. Abduction of Rono's group

[3458] Transcript of 27 June 2006, Joseph Mendy, p. 7.
[3459] Transcript of 27 June 2006, Joseph Mendy, p. 7.
[3460] Transcript of 27 June 2006, Joseph Mendy, p. 7; Transcript of 19 May 2008, Mohammed Abdulahi Garbah, p. 125 (CS).
[3461] Transcript of 20 June 2006, Ganese Jaganathan, p. 32; Transcript of 27 June 2006, Joseph Mendy, p. 10; Transcript of 19 May 2008, Mohammed Abdulahi Garbah, p. 126 (CS).
[3462] Transcript of 29 March 2006, Leonard Ngondi, p. 35.
[3463] Transcript of 29 March 2006, Leonard Ngondi, pp. 35-36.
[3464] Transcript of 29 March 2006, Leonard Ngondi, p. 35.
[3465] Transcript of 20 June 2006, Ganese Jaganathan, p. 33.
[3466] Transcript of 29 March 2006, Leonard Ngondi, p. 36.

1809. After dispatching Odhiambo's group to Teko Barracks, Ngondi received a call from Major Rono, the Commander of KENBATT B Company at the Magburaka Islamic Centre. Rono reported that three RUF rebels had brought him a note from Sesay. The note stated that the current events related to a small group of uncontrolled RUF, that Sesay would sort out the situation and that things could return to normal. The note also stated that Sesay wanted to meet Rono. Rono could see Sesay's car, which was known to him, in the distance outside his camp.[3467]

1810. On Ngondi's orders, Rono and at least three peacekeepers went to personally invite Sesay to Ngondi's headquarters in Makeni to discuss the situation.[3468] However, all four peacekeepers, along with their vehicle and equipment, were seized by the RUF.[3469] Ngondi was later told that Gbao and Colonel Alfred Touray were there too.[3470] Touray was the RUF Commander in charge of Magburaka at that time.[3471]

1811. Given the overall situation, Ngondi ordered his peacekeepers not to move out of their camps in order to avoid unnecessary confrontation.[3472]

11.1.2.7. Peacekeepers captive at Teko Barracks

1812. The UNAMSIL peacekeepers at Teko Barracks were held in a small room, measuring about two to three metres.[3473] The detainees were given no food or water and were harassed by the RUF. By this stage there were 17 peacekeepers held captive.[3474]

1813. On 2 May 2000, a group of rebels came to the room where the peacekeepers were being held at Teko Barracks.[3475] The peacekeepers were taken to an area where Jaganathan saw two dead RUF fighters covered in blood-stained blankets and one injured RUF fighter who had

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[3467] Transcript of 29 March 2006, Leonard Ngondi, pp. 36-37.
[3468] Transcript of 29 March 2006, Leonard Ngondi, p. 37.
[3469] Transcript of 29 March 2006, Leonard Ngondi, pp. 37-38. *See also* Transcript of 20 June 2006, Ganese Jaganathan, p. 40.
[3470] Transcript of 29 March 2006, Leonard Ngondi, p. 38; Transcript of 5 May 2008, DMK-116, p. 77; Transcript of 25 May 2007, Issa Sesay, pp. 52-53.
[3471] Transcript of 5 May 2008, DMK-116, p. 77; Transcript of 29 March 2006, Leonard Ngondi, p. 38.
[3472] Transcript of 29 March 2006, Leonard Ngondi, p. 38.
[3473] Transcript of 20 June 2006, Ganese Jaganathan, p. 32.
[3474] Transcript of 20 June 2006, Ganese Jaganathan, pp. 32-33; Transcript of 27 June 2006, Joseph Mendy, p. 11; Transcript of 10 November 2005, TF1-366, pp. 45-46 (CS).
[3475] Transcript of 20 June 2006, Ganese Jaganathan, p. 34; Transcript of 27 June 2006, Joseph Mendy, p. 12.

been shot in the elbow.[3476] The peacekeepers were made to stand behind the dead and injured and were photographed before being escorted back to the room where they were being confined. Jaganathan heard someone saying that the RUF wanted evidence that the UN had observed that RUF men had been killed by the UN.[3477]

1814. That evening, at about 11:00pm, a rebel entered the room and took one of the peacekeepers out.[3478] After some time, the remaining three peacekeepers heard moaning and crying, and then silence.[3479] The same happened with five more of the detained persons before Jaganathan was also taken out.[3480] He was taken to another room and ordered to "[r]emove everything."[3481] He saw the other six peacekeepers lying on their sides on the floor, dressed only in their underwear. The detainees had their hands bound behind their backs with electrical wire. Several of them were moaning. Jaganathan was forced to strip to his underwear. Someone slapped his back, causing him to fall. Someone then stepped on his back, pulled both his arms backwards and tied him up with his arms pulled backwards, above the elbows. The detainees who came after Jaganathan underwent the same fate.[3482]

11.1.2.8. Peacekeepers transported from Teko Barracks to Small Sefadu

1815. In the early hours of 3 May 2000, the peacekeepers at Teko Barracks were tied up and ordered to board a MILOBs vehicle, together with two armed RUF escorts.[3483] The detainees were not told where they were being taken, but the vehicle travelled east.[3484]

1816. The vehicle eventually stopped in Matotoka and Sesay, who was accompanied by a group of rebels, identified himself to the peacekeepers as "Major Robert."[3485] Although it was dark, Odhiambo recognised "Robert" and whispered to Jaganathan that "Robert" was in fact

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[3476] Transcript of 20 June 2006, Ganese Jaganathan, p. 34.
[3477] Transcript of 20 June 2006, Ganese Jaganathan, p. 35; Transcript of 27 June 2006, Joseph Mendy, p. 13.
[3478] Transcript of 20 June 2006, Ganese Jaganathan, p. 35; Transcript of 27 June 2006, Joseph Mendy, pp. 13-14.
[3479] Transcript of 20 June 2006, Ganese Jaganathan, p. 35.
[3480] Transcript of 20 June 2006, Ganese Jaganathan, pp. 35-36; Transcript of 27 June 2006, Joseph Mendy, p. 14.
[3481] Transcript of 20 June 2006, Ganese Jaganathan, p. 36.
[3482] Transcript of 20 June 2006, Ganese Jaganathan, pp. 36-37; Transcript of 27 June 2006, Joseph Mendy, p. 14; Transcript of 10 November 2005, TF1-366, p. 46 (CS). *See also* Exhibit 109, Report on the RUF Rebel Attack on UNAMSIL Officers in Makeni Team Site, dated 27 November 2000, p. 21017.
[3483] Transcript of 20 June 2006, Ganese Jaganathan, pp. 37-38; Transcript of 27 June 2006, Joseph Mendy, pp. 15-17.
[3484] Transcript of 20 June 2006, Ganese Jaganathan, pp. 37-38.
[3485] Transcript of 20 June 2006, Ganese Jaganathan, p. 38-39; Transcript of 27 June 2006, Joseph Mendy, pp. 16-17.

Sesay.[3486] Mendy was also able to identify Sesay, as they had met on several previous occasions.[3487]

1817. Sesay said to Gjellesdad: "You white man [sic] bring all problems to Africa."[3488] Sesay threw a can of stout he had been drinking at Gjellesdad's chest.[3489] Sesay then instructed the rebels to untie the peacekeepers. He told them that they would be taken to a farm where all their belongings would be returned to them.[3490] Sesay offered cigarettes and cans of beer to some of the peacekeepers.[3491]

1818. At one point, however, Sesay said aggressively: "[w]e have just received a report that thousands of UN troops are being sent towards Lunsar. Our men are ready for them. Send in your men."[3492] Jaganathan later discovered that the UN had ordered ZAMBATT peacekeepers to deploy to Makeni to reinforce the trapped KENBATT peacekeepers.[3493]

1819. The peacekeepers were made to reboard the MILOB vehicle. Prior to departing, however, a group of nine other peacekeepers was brought from the bush and made to join them. One of them was Major Rono of KENBATT.[3494]

1820. About one kilometre further the peacekeepers, now numbering 20 men, were ordered to transfer to a truck that had been following them.[3495] Four armed RUF escorts were positioned in each corner of the truck. The truck was being driven in a reckless fashion and at one point it careered off the road, throwing the peacekeepers from the vehicle. Ten of them were injured. Mendy sustained the most severe injuries, as his leg was fractured and he was bleeding profusely.[3496]

[3486] Transcript of 20 June 2006, Ganese Jaganathan, p. 39; Transcript of 27 June 2006, Joseph Mendy, p. 18.
[3487] Transcript of 27 June 2006, Joseph Mendy, pp. 20-21.
[3488] Transcript of 20 June 2006, Ganese Jaganathan, p. 39; Transcript of 27 June 2006, Joseph Mendy, p. 18
[3489] Transcript of 20 June 2006, Ganese Jaganathan, p. 39; Transcript of 27 June 2006, Joseph Mendy, p. 18.
[3490] Transcript of 20 June 2006, Ganese Jaganathan, pp. 39, 75.
[3491] Transcript of 20 June 2006, Ganese Jaganathan, p. 74.
[3492] Transcript of 20 June 2006, Ganese Jaganathan, pp. 39-40.
[3493] Transcript of 20 June 2006, Ganese Jaganathan, pp. 39-40. *Infra* para. 1831.
[3494] Transcript of 20 June 2006, Ganese Jaganathan, pp. 39-40.
[3495] Transcript of 20 June 2006, Ganese Jaganathan, pp. 40-41; Transcript of 27 June 2006, Joseph Mendy, pp. 21-22.
[3496] Transcript of 20 June 2006, Ganese Jaganathan, p. 41; Transcript of 27 June 2006, Joseph Mendy, pp. 24-25; Transcript of 25 May 2007, Issa Sesay, pp. 76, 78.

1821. One of the rebels distributed some raw tapioca to the peacekeepers to eat.[3497] The rebels then called a group of ten civilians to the accident site to carry those who were injured.[3498] Three of the RUF militants carried Mendy.[3499]

1822. The peacekeepers were taken to a place called "Camp 11" in Small Sefadu, Kono District.[3500] Camp 11 comprised six or seven destroyed barracks and the peacekeepers were held in a room in the only repaired barracks.[3501] At Small Sefadu there were a number of armed RUF fighters.[3502]

11.1.3. Attacks against UNAMSIL Camps on 2 May 2000

11.1.3.1. Attack on Makump DDR Camp

1823. In the morning of 2 May 2000, the Makump DDR camp remained surrounded by RUF fighters blocking the road.[3503] The fighters who had been at the camp the day before had been replaced by new fighters who had come from as far as Kono.[3504] That same morning Jaganathan observed a large number of RUF fighters board two trucks and depart from Teko Barracks.[3505]

1824. At about 11:00am, Ngondi lost contact with Lieutenant Osimbo and Lieutenant Ndeche, the platoon Commanders at the Makump DDR camp.[3506]

1825. Later the same day, the RUF attacked the Makump DDR Camp.[3507] During the attack, an RUF fighter shot a KENBATT peacekeeper named Private Yusif at point blank range in the chest. Private Yusif died.[3508] Ngondi explained that at that point:

[3497] Transcript of 20 June 2006, Ganese Jaganathan, p. 76; Transcript of 27 June 2006, Joseph Mendy, p. 27.
[3498] Transcript of 20 June 2006, Ganese Jaganathan, pp. 41-42.
[3499] Transcript of 27 June 2006, Joseph Mendy, pp. 25-26.
[3500] Transcript of 20 June 2006, Ganese Jaganathan, p. 42.
[3501] Transcript of 20 June 2006, Ganese Jaganathan, p. 45.
[3502] Transcript of 20 June 2006, Ganese Jaganathan, p. 45; Transcript of 27 June 2006, Joseph Mendy, pp. 27-28.
[3503] Transcript of 29 March 2006, Leonard Ngondi, p. 34; Transcript of 20 June 2006, Ganese Jaganathan, p. 34.
[3504] Transcript of 29 March 2006, Leonard Ngondi, p. 34.
[3505] Transcript of 20 June 2006, Ganese Jaganathan, p. 34.
[3506] Transcript of 29 March 2006, Leonard Ngondi, pp. 33-34, 38.
[3507] Transcript of 29 March 2006, Leonard Ngondi, p. 42; Transcript of 20 June 2006, Ganese Jaganathan, p. 35; Transcript of 10 November 2005, TF1-366, pp. 36-37, 43 (CS); Transcript of 18 February 2008, DIS-034, p. 91.
[3508] Transcript of 29 March 2006, Leonard Ngondi, pp. 42-43; Transcript of 20 June 2006, Ganese Jaganathan, p. 34; Transcript of 18 February 2008, DIS-015, p. 53; Transcript of 27 June 2006, Joseph Mendy, p. 12; Transcript of 25 May 2007, Issa Sesay, p. 45; Transcript of 25 July 2005, TF1-360, pp. 62, 65 (CS); Transcript of 10 November 2005, TF1-366, p. 35 (CS); Transcript of 21 March 2006, TF1-174, p. 63 (CS).

> The Kenyan troops knew hostilities have been declared [sic] and they had to defend themselves. They were surrounded. They could not communicate, but as a soldier they did what they had to do to survive, to fight and break out from that encirclement.[3509]

1826. These KENBATT peacekeepers could not communicate or use their vehicles. They managed to escape from the camp and most headed south, although a few travelled through the bush towards Makeni.[3510] During the escape, a peacekeeper by the name of Wanyama was shot in the hip by RUF fighters. He later died from the wound.[3511] In addition, seven peacekeepers were reported injured.[3512] RUF fighters then ransacked and burned down the DDR camp.[3513]

1827. Eventually, two or three KENBATT peacekeepers managed to reach the KENBATT A Company Camp in Makeni in the early hours of 3 May 2000, from where they briefed Ngondi about events at Makump DDR Camp.[3514] However, they did not know the whereabouts of the other KENBATT peacekeepers from Makump camp. Later that day, Lieutenant Ndeche and Lieutenant Osimbo arrived at Mile 91 and established contact with the GUINBATT peacekeepers based there.[3515]

11.1.3.2. Attacks on UNAMSIL Peacekeepers in Magburaka and Waterworks

1828. At about 3:00pm on 2 May 2000, the RUF attacked the B Company base at the Magburaka Islamic Centre, firing at it in an effort to storm it.[3516] The RUF fighters used small arms, rocket propelled grenades and mortars.[3517]

1829. The KENBATT peacekeepers based at the DDR camp nearby at Waterworks heard about the attack and shortly thereafter RUF fighters began surrounding their base.[3518] The

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[3509] Transcript of 29 March 2006, Leonard Ngondi, p. 43.
[3510] Transcript of 29 March 2006, Leonard Ngondi, p. 43; Transcript of 10 November 2005, TF1-366, p. 43 (CS).
[3511] Transcript of 29 March 2006, Leonard Ngondi, pp. 43-44; Transcript of 10 November 2005, TF1-366, p. 43 (CS).
[3512] Transcript of 30 March 2006, Leonard Ngondi, p. 2; Transcript of 20 June 2006, Ganese Jaganathan, p. 35; Exhibit 301, UNAMSIL List of Kenyans Affected by Hostilities.
[3513] Transcript of 20 June 2006, Ganese Jaganathan, pp. 38, 55; Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, p. 3580.
[3514] Transcript of 29 March 2006, Leonard Ngondi, p. 43; Transcript of 21 March 2006, TF1-174, pp. 62-63 (CS).
[3515] Transcript of 29 March 2006, Leonard Ngondi, p. 43; Transcript of 10 November 2005, TF1-366, p. 43 (CS).
[3516] Transcript of 29 March 2006, Leonard Ngondi, pp. 36, 39; Transcript of 25 July 2005, TF1-360, pp. 62, 65 (CS); Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 117-118 (CS).

peacekeepers decided to abandon their camp and move towards the Islamic Centre before they were overwhelmed by the rebels.[3519] The peacekeepers were travelling over a bridge towards Magburaka in a UN armoured vehicle when rebels fired an RPG at them. The vehicle fell from the bridge, killing two peacekeepers and wounding several others.[3520] In addition, the RUF captured platoon Commander Lieutenant Kirimi and a crew of at least three peacekeepers in his Land Rover.[3521] The rest of the platoon managed to reach the Islamic Centre.[3522]

1830. The attack at the Islamic Centre was eventually repulsed by UNAMSIL. After the RUF withdrew, three peacekeepers were reported injured.[3523]

11.1.4. Attacks against UNAMSIL on 3 and 4 May 2000

11.1.4.1. UNAMSIL Headquarters deploys reinforcements to Magburaka

1831. On 1 May 2000, in light of the day's events, the UNAMSIL Force Commander at Headquarters in Freetown decided to deploy three groups of additional peacekeepers to Ngondi's area of responsibility. The KENBATT Sector Headquarters, commanded by Brigadier-General Mulinge, and two ZAMBATT companies, commanded by Lieutenant-Colonel Edwin Kasoma, were instructed to move from Lungi, via Lunsar and Makeni, to Magburaka. The third group of peacekeepers, the Indian QRC, were to travel to Magburaka via a different route, passing through Mile 91. The aim was to restore normalcy by engaging the RUF Commanders on the ground in discussions to defuse the situation.[3524]

11.1.4.2. ZAMBATT deploy to Lunsar and Makeni

1832. At about 8am on 2 May 2000, Kasoma departed Lungi with a force of two ZAMBATT Companies, totalling more than 200 men. He was accompanied by Mulinge, about 30 men

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[3517] Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, p. 3580.
[3518] Transcript of 29 March 2006, Leonard Ngondi, pp. 3-5, 36, 39.
[3519] Transcript of 29 March 2006, Leonard Ngondi, p. 39.
[3520] Transcript of 10 November 2005, TF1-366, pp. 40-41 (CS); Transcript of 12 March 2008, Mohamed Ali Hassan, pp. 74-75; Transcript of 25 May 2007, Issa Sesay, pp. 52-53; Transcript of 11 March 2008, Daniel Ishmael Opande, pp. 101-102.
[3521] Transcript of 29 March 2006, Leonard Ngondi, pp. 39-40.
[3522] Transcript of 29 March 2006, Leonard Ngondi, p. 40; Transcript of 10 November 2005, TF1-366, p. 40 (CS).
[3523] Transcript of 29 March 2006, Leonard Ngondi, p. 39.

from the KENBATT Sector Headquarters, and two MILOBs. The group spent the night in Lunsar. Kasoma was warned to exercise care in proceeding as the RUF had set up roadblocks along the Makeni road, with the nearest one 12 kilometres away from Lunsar. Kasoma therefore decided to reduce the size of his force. He organised a "combat-ready" convoy of over 100 men. The balance of his contingent remained in Lunsar and was to join him later in Makeni.[3525] The peacekeepers in the convoy were armed but with light weaponry only adequate for use in self-defence: pistols, rifles and some sub-machine guns.[3526]

1833. Kasoma and his convoy departed Lunsar at 7am on 3 May 2000. After about 10 to 12 kilometres, he was informed by radio of gunshots and a roadblock. On Kasoma's instructions, the Company Commander of the convoy approached the roadblock, identified himself and stated that ZAMBATT were to be deployed on a peacekeeping mission.[3527] The rebel in charge of the roadblock told the Company Commander that prior to allowing the convoy to pass, Kasoma was required to meet with the RUF Commander, who was situated a little further down the road.[3528]

11.1.4.3. Abduction of Kasoma and ten ZAMBATT peacekeepers

1834. The peacekeepers attempted unsuccessfully for several hours to negotiate their passage past the roadblock. Eventually, sometime in the early afternoon, Kasoma agreed to proceed ahead with ten armed protection force peacekeepers in two vehicles to meet the RUF Commander. About 500 metres past the roadblock they arrived in a small village named Moria, where the two vehicles found themselves surrounded by over 100 RUF fighters. Kasoma's men were unable to react and the RUF quickly disarmed them. Most of the RUF fighters were armed with light weapons such as AK-47s, rocket launchers or grenades.[3529]

[3524] Transcript of 29 March 2006, Leonard Ngondi, pp. 40-41; Transcript of 22 March 2006, Edwin Kasoma, pp. 9, 13; Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 60-63 (CS); Transcript of 6 March 2008, DIS-310, pp. 9-10, 12 (CS).

[3525] The MILOBs decided to return to Freetown: Transcript of 22 March 2006, Edwin Kasoma, pp. 10-13.

[3526] Transcript of 6 March 2008, DIS-310, p. 61.

[3527] Transcript of 22 March 2006, Edwin Kasoma, pp. 13-14, 16.

[3528] Transcript of 22 March 2006, Edwin Kasoma, p. 14; Transcript of 6 March 2008, DIS-310, p. 22 (CS). *See* Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, pp. 3580-3581 for a general account of the capture of the ZAMBATT peacekeepers.

[3529] Transcript of 22 March 2006, Edwin Kasoma, pp. 16-18.

1835. While Kasoma's men were locked inside a house, Kasoma was taken by several officers, including one man with a limp, to a small shelter to meet the RUF Commander. The RUF Commander pointed a pistol at Kasoma and instructed him to write a note requesting his second-in-command ("2 1/C") to send forward five Land Rovers and three armoured vehicles.[3530] Kasoma wrote a note in his native Zambian language, attempting to warn his 2 1/C of the situation, but the RUF Commander refused to accept the note. He wrote a new note in English and forced Kasoma to sign it. Upon the RUF Commander's order, three RUF fighters took Kasoma a short distance away into the bush and detained him there under armed guard.[3531]

11.1.4.4. Abduction of Kasoma's convoy

1836. Kasoma's note was taken by an RUF fighter to Kasoma's 2 1/C, who was waiting at the roadblock with the convoy of around 100 peacekeepers. The note requested the 2 1/C to release vehicles with men to assist Kasoma in negotiations. Although the 2 I/C recognised Kasoma's signature, the peacekeepers doubted the note's authenticity and the 2 I/C decided not to comply with it.[3532]

1837. After a short while, another RUF fighter came to the convoy. He explained that he had been sent by Sesay to accompany the convoy to Makeni, since the arrival of such a large group of peacekeepers unaccompanied may cause panic among the residents of Makeni, given the prevailing unstable situation between UNAMSIL and the RUF. The convoy proceeded with the RUF fighter and after a few kilometres, they arrived at another RUF roadblock. The RUF fighters manning it stipulated that the convoy was to be broken into smaller groups. However, by this stage the peacekeepers were highly suspicious of the RUF's intentions and insisted that the convoy proceed intact.[3533]

1838. The convoy proceeded and shortly thereafter arrived at a major roadblock, with stones, logs and the wreckage of burnt vehicles obstructing the entire road. By this time, darkness was descending. Approximately 1000 armed RUF fighters surrounded the peacekeepers and

[3530] Transcript of 22 March 2006, Edwin Kasoma, pp. 17, 19-20; Transcript of 23 March 2006, Edwin Kasoma, pp. 132-133. *See also* Transcript of 6 March 2008, DIS-310, pp. 23-24 (CS).
[3531] Transcript of 22 March 2006, Edwin Kasoma, p. 21.
[3532] Transcript of 6 March 2008, DIS-310, pp. 23-24 (CS).
[3533] Transcript of 6 March 2008, DIS-310, pp. 24,26 (CS).

ordered the peacekeepers to surrender their arms.[3534] The RUF Commander giving orders at the scene was a short person with a limp.[3535] The entire group was disarmed and the peacekeepers were put into various vehicles and driven away in different directions.[3536]

11.1.4.5. ZAMBATT captives taken to Makeni and Yengema

1839. After approximately three hours in the bush, the RUF fighters guarding Kasoma escorted him back to Moria and ordered him into a small red van. The RUF Commander who had forced him to write the note at gunpoint was in the passenger seat of the van. A large number of armed RUF fighters were present, some of whom were dressed in Zambian combat uniforms. An RUF fighter drove the van to Makeni.[3537]

1840. Upon arriving in Makeni on the evening of 3 May 2000, Kasoma encountered many of the peacekeepers whom he had left behind in the convoy at the roadblock. They had been disarmed and stripped of their uniforms.[3538] The RUF Commander took Kasoma and the ZAMBATT soldiers to the MP Office in Makeni, where he introduced Kasoma as the Commander of ZAMBATT to Sesay. Kallon was present at this time.[3539] Sesay gave orders for the peacekeepers to be moved to Kono.[3540]

1841. The RUF and the peacekeepers left Makeni at 9pm on 3 May 2000. During the night, while travelling together in a truck, RUF fighters harassed them, walked on top of them, sat on them, and confiscated their personal belongings.[3541]

1842. Kasoma and approximately 100 ZAMBATT peacekeepers arrived at the RUF base in Yengema in Kono District between 6am and 9am on 4 May 2000. About 15 KENBATT Sector

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[3534] Transcript of 6 March 2008, DIS-310, pp. 26-27, 60 (CS); Transcript of 22 July 2005, TF1-360, pp. 8-9 (CS).
[3535] Transcript of 6 March 2008, DIS-310, pp. 28, 61 (CS).
[3536] Transcript of 6 March 2008, DIS-310, pp. 27-30 (CS).
[3537] Transcript of 22 March 2006, Edwin Kasoma, pp. 21-23.
[3538] Transcript of 22 March 2006, Edwin Kasoma, p. 23; Transcript of 25 May 2007, Issa Sesay, pp. 64-65; Transcript of 15 April 2008, Morris Kallon, p. 70; Transcript of 24 April 2008, DMK-087, pp. 54-55; Transcript of 21 March 2006, TF1-174, pp. 63-64 (CS); Transcript of 22 July 2005, TF1-360, pp. 10-11 (CS); Transcript of 15 February 2008, DIS-015, pp. 47-48.
[3539] Transcript of 22 March 2006, Edwin Kasoma, p. 24; Transcript of 25 May 2007, Issa Sesay, pp. 63-65; Transcript of 15 April 2008, Morris Kallon, pp. 69-70; Transcript of 24 April 2008, DMK-087, pp. 56, 75.
[3540] Transcript of 25 May 2007, Issa Sesay, p. 71-73, 76; Transcript of 19 June 2008, DAG-111, pp. 6-7, 10-11, 35; Transcript of 7 April 2005, TF1-263, p. 41; Transcript of 22 March 2006, Edwin Kasoma, p. 24.
[3541] Transcript of 6 March 2008, DIS-310, pp. 28-32 (CS); Transcript of 22 March 2006, Edwin Kasoma, pp. 24, 41; Transcript of 19 June 2008, DAG-111, p. 39; Transcript of 25 July 2000, TF1-360, p. 75.

Headquarters personnel, including Mulinge, arrived that same morning. As the senior Commanders, Kasoma and Mulinge were taken to Monica Pearson's house, while the others were kept in a nearby school block.[3542]

11.1.4.6. Attack on ZAMBATT at Lunsar

1843. After Kasoma's convoy was captured, a group of RUF fighters marched to Lunsar and staged a dawn attack on the ZAMBATT group that had remained behind. The RUF were fighting with weapons they had captured from the ZAMBATT peacekeepers at Moria. The ZAMBATT peacekeepers at Lunsar attempted to repel the RUF attack,[3543] but the RUF captured their position and the ZAMBATT peacekeepers were forced to retreat.[3544] During the fight, three ZAMBATT peacekeepers went missing. One peacekeeper reappeared one month later, but the other two never returned and have since been declared deceased.[3545]

11.1.5. Coordination and Communication Among RUF Commanders (1 to 4 May 2000)

11.1.5.1. Sesay moves to Makeni

[3542] Transcript of 22 March 2006, Edwin Kasoma, p. 24; Transcript of 6 March 2008, DIS-310, p. 29 (CS); Transcript of 22 April 2005, TF1-362, pp. 28-29 (CS); Transcript of 25 May 2007, Issa Sesay, pp. 74-75; Transcript of 24 January 2005, TF1-071, pp. 3, 32.

[3543] Transcript of 22 March 2006, Edwin Kasoma, pp. 48-49; Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 138-140 (CS); Transcript of 5 June 2008, Mohammed Abdulahi Garbah, pp. 50-52 (CS); Transcript of 21 March 2006, TF1-174, p. 66 (CS).

[3544] Transcript of 22 March 2006, Edwin Kasoma, pp. 49-51. The Chamber heard evidence that the ZAMBATT peacekeepers were fighting with a unit of NIBATT troops and two NIBATT personnel were also killed in this incident: Transcript of 5 June 2008, Mohammed Abdulahi Garbah, p. 53 (CS). The Chamber further heard evidence of an attack on NIBATT forces at Rogberi Junction in Port Loko District: Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 138-140 (CS); Transcript of 5 June 2008, Mohammed Abdulahi Garbah, pp. 42-44, 49-53 (CS). The Chamber is of the view that it has not been established that these NIBATT forces were in fact members of the UNAMSIL mission, as ECOMOG forces remained deployed in Sierra Leone until May 2000 and certain ECOMOG units were transferred or seconded to UNAMSIL: *see* Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, pp. 3575-3576. As the status of personnel as members of a peacekeeping mission established in accordance with the UN Charter is an element of the offence under Count 15, the Chamber finds that there is reasonable doubt as to whether this element is proven in respect of the NIBATT troops. In addition, this evidence was adduced entirely in cross-examination: *see* in this respect Transcript 5 June 2008, pp 45-47. For these reasons, the Chamber has made no findings in relation to attacks on NIBATT.

[3545] Transcript of 22 March 2006, Edwin Kasoma, p. 49. *See also* Transcript of 20 July 2004, TF1-199, pp. 36-37; Transcript of 27 July 2004, TF1-199, pp. 15-17, 24. The Chamber notes TF1-199's evidence that he observed peacekeepers captured by RUF rebels at Lunsar. This aspect of TF1-199's evidence was not corroborated by Kasoma and the Chamber finds it unreliable.

1844. On 1 May 2000, Sesay was in Kono District.[3546] Sesay was informed of the attacks in Makeni and Magburaka via radio and Sankoh instructed him to travel to Makeni to ascertain the course of events.[3547] Prior to his departure from Kono District, Sesay contacted the Brigade Commander in Bombali District, Komba Gbundema, and the Commander in Tongo Field in Kenema District and ordered them to send reinforcements to Makeni.[3548]

11.1.5.2. RUF press release

1845. On 2 May 2000, the RUF issued a four page press release on the attacks on UNAMSIL peacekeepers. The press released alleged that on 27 April 2000, UNAMSIL forcibly disarmed five RUF fighters and opened fire on a group of fighters who refused to disarm, killing two. It further states that on 1 May 2000, UNAMSIL used force to disarm fighters at Magburaka, injuring two RUF fighters and that 'UNAMSIL later alleged that the RUFP destroyed the reception centres which is totally false and misleading.'[3549]

1846. The press release then explained that on 2 May 2000, the 'Field Commander' went to Makeni and Magburaka on the instructions of the Leader to investigate the incidents, but UNAMSIL peacekeepers in both locations opened fire at him.[3550] The press release concludes by accusing UNAMSIL of staging a 'deliberate and calculated attempt to tarnish the reputation of the RUFP and to derail the hard won peace Sierra Leoneans have been praying for.'[3551]

11.1.5.3. Radio communications on 3 and 4 May 2000

1847. On 3 May 2000, Sesay reported to Sankoh that he had received information that UNAMSIL peacekeepers were travelling from Mile 91 towards Magburaka with 15 vehicles. Sesay informed Sankoh: "I have gone there to put situation [sic] under control in the best way

[3546] Transcript of 25 May 2007, Issa Sesay, p. 41; Transcript of 24 April 2008, DMK-087, pp. 73-74, 94; Transcript of 25 July 2005, TF1-360, pp. 81-82 (CS); Transcript of 22 October 2007, DIS-069, p. 27 (CS); Transcript of 15 February 2008, DIS-015, p. 48; Transcript of 18 February 2008, DIS-034, p. 91.
[3547] Exhibit 316, RUFP Press Release, dated 2 May 2000, p. 10188; Transcript of 22 October 2007, DIS-069, pp. 23-27 (CS).
[3548] Transcript of 22 July 2005, TF1-360, p. 7. *See also* Transcript of 17 April 2008, Morris Kallon, p. 28, where Kallon confirms that Gbundema was in Kamawie in Bombali District in May 2000. Gbundema had been based in Kamakwie as the Brigade Commander since at least February 1999. Throughout 1999, he was aligned with Superman: *see* Transcript of 22 May 2007, Issa Sesay, p. 38; Transcript of 9 November 2005, TF1-366, p. 44-45 (CS).
[3549] Exhibit 316, RUFP Press Release, dated 2 May 2000, p. 10188.
[3550] Exhibit 316, RUFP Press Release, dated 2 May 2000, pp. 10188-10189.
[3551] Exhibit 316, RUFP Press Release, dated 2 May 2000, pp. 10190.

possible."[3552] That same day, Sesay sent a message to the Brigade Commander in Kono ordering him to 'keep strong security' in Kono and destroy all motorable roads leading to Masingbi.[3553]

1848. On 4 May 2000, the Brigade Commander for Kono District reported to Sesay:

> Sir, I have the following with me
> 1. One Brigadier Gen
> 2. One Lt. Col
> 3. Three Majs.
> 4. Ten Capts.
> 5. Two WOI
> 6. Two WOII
> 7. Forty-four Pvts
> 8. Two Lt. and Lts. Seven
> 9. Eighty-eight L/C and Full Cpts.
> 10. Nineteen Sgts.
> 11. Fifteen S/Sgts.
>
> and I received twenty yesterday with the total of two hundred and eight men. Among those I received was one white. They got an accident and one foot got broken [...] Sir, advice.[3554]

1849. The Chamber recalls that Kasoma was a Lieutenant-Colonel, Mulinge was a Brigadier-General and Gjellesdad was white.[3555] The Chamber accordingly finds that the peacekeepers at Yengema and Small Sefadu were in the custody of RUF fighters under the command of the Brigade Commander for Kono District.[3556]

11.1.5.4. Identity of the RUF Commander at Moria

1850. At the time of his abduction, Kasoma was not told the name of the RUF Commander who had forced him to write the note to his 2 1/C and subsequently accompanied him to Makeni and introduced him to Sesay. While in captivity at Yengema, Kasoma saw that RUF

[3552] Exhibit 34, RUF Radio Log Book, p. 8101

[3553] Exhibit 212, RUF Radio Log Book, p. 28070. This is followed by the script 'Infos from the Leader that the hostages are not to be molested as they are on negotiations for their release', dated 4 May 2000, although it is unclear if this is a radio message and if so, to whom and from whom: Exhibit 212, RUF Radio Log Book, p. 28070.

[3554] Exhibit 212, RUF Radio Log Book, pp. 28071-28072. The message is marked 'Seen'. The message is marked from 'Col. Big.' We find that this was a reference to Colonel Lansana Conteh, who was the Brigade Commander for Kono District in 2000, also known as 'The Big': Transcript of 21 January 2005, TF1-071, pp. 92-94 (CS); Transcript of 10 November 2005, TF1-366, pp. 35-36 (CS); Transcript of 24 May 2007, Issa Sesay, p. 70; Transcript of 29 April 2008, DMK-162, p. 102. Transcript of 6 March 2008, DIS-310, p. 39.

[3555] *Supra* paras 1754, 1757, 1806.

[3556] The Chamber notes that Small Sefadu and Yengema are both located in close proximity to Koidu Town in Kono District.

Commander with Sesay on approximately four occasions and the RUF Commander was identified to him as Kallon.[3557]

1851. The Chamber recalls that in April and May 2000, Kallon was the BGC and he was stationed in Makeni.[3558] On 16 April 2000 at 8.35pm, Sankoh transmitted a radio message to Kallon advising him not to be 'fooled' on disarmament. Sankoh ordered Kallon that "[t]here should be no disarmament for now until further notice. Any mistake towards that you will be heldly [sic] responsible. Act on this accordingly."[3559] Five minutes later, Sesay sent a message to Kallon stating:

> By my instruction, you are not to allow any one to stand before you for any disarmament until otherwise order. If you are forced to do so, you are to defend yourself.[3560]

1852. On 2 May 2000, Kallon sent the following order to the Brigade Commander for Kono District:

> You are to put 100 armed men together and fuel the tank along with the twin barrel and put it in any veh. [sic] and proceed to my point today without fail. Any delay [you] will be held responsible. Time factor is very important.[3561]

1853. From the content and tone of this message, the Chamber finds that the only reasonable inference to be drawn is that Kallon was preparing military operations on 2 May 2000. On 3 May 2000, the day of the abductions, Kallon sent a situation report to Sankoh, informing him that:

> Sir,
> The main thing that sprang the fighting from Makeni to Magburaka is because of the following reasons: when our men reached at Makump DDR camp the UN MILOBs arrested them and forcefully disarmed them without reason. They gave the remarks that they are to be in the camp (our men). Sir, when the report reaches us, Col. Bao proceeded at the scene to know the cause upon his arrival they were in to arrest Col Bao. When I also went there for them to hand over the arrested men including their weapons they opened sporadic fire on us without reason.

[3557] Transcript of 22 March 2006, Edwin Kasoma, pp. 21-22, 27-28, 38-40.
[3558] *Supra* paras 931-933.
[3559] Exhibit 212, RUF Radio Log Book, p. 28062.
[3560] Exhibit 212, RUF Radio Log Book, p. 28062.
[3561] Exhibit 212, RUF Radio Log Book, p. 28067.

> Sir, also when Col. Issah left Ko [illegible] for my point, upon reaching Arab College they blocked the highway with their tank which resulted Col. Issah to drove into the bush causing one of his bodyguards wounded. When Col. Bai Bureh and others went to the scene to find out, they also use the violence against them. Even the youths and the civilians can testify to this. We also as armed men just have to defend ourselves. Sir, presently their reinforcement is heading to my location from Lunsar. Sir, to conclude, according to them they will use force to disarm us. Every day they are increasing in numbers in their force. Sir, this is the present situation. I am awaiting for your advice.[3562]

1854. The Chamber therefore finds that Kallon was aware that ZAMBATT troops were travelling towards his location. In the Chamber's view, this message demonstrates that Kallon, as the senior RUF Commander with responsibility for the Makeni-Magburaka area, perceived it necessary to respond to the deployment of the peacekeepers. This conclusion is reinforced by the imperative nature of the recent orders regarding disarmament from his superiors Sankoh and Sesay.

1855. The Chamber further recalls that the ZAMBATT peacekeepers abducted on 3 May 2000 were transported that same evening to Kono District and were placed under the command of the Brigade Commander there, to whom Kallon had transmitted the urgent order on 2 May 2000.[3563]

1856. The Chamber recalls that one of the RUF fighters who was present at Moria during the initial ambush and forcible disarmament of Kasoma and his ten peacekeepers, and who was among the fighters that took Kasoma to their superior Commander, walked with a limp.[3564] RUF Commander Komba Gbundema walked with a limp.[3565] Gbundema had also been ordered by Sesay to send reinforcements to Makeni in response to the events of 1 May 2000.[3566] The Chamber accordingly finds that Gbundema was present at Moria on 3 May 2000. We have found that Gbundema was a subordinate of Kallon.[3567]

[3562] Exhibit 34, RUF Radio Log Book, p. 8097-8098; Exhibit 212, RUF Radio Log Book, pp. 28067-28068. In the record of the message in Exhibit 34, 'Col. Bao' is spelt 'Col. Gbao'. The Chamber is therefore satisfied that Kallon is referring to the Accused Gbao.
[3563] *Supra* paras 1842, 1848-1849.
[3564] *Supra* paras 1835,1838.
[3565] Transcript of 15 April 2008, p. 73.
[3566] *Supra* para. 1844.
[3567] *Supra* para. 2251.

1857. The Chamber notes the testimony of DMK-161 that Sankoh issued the order to arrest the ZAMBATT peacekeepers and that Komba Gbundema and Kailondo effected the abductions.[3568] The witness further stated that at Teko Barracks on the evening of 3 May 2000, Sesay and Kallon enquired as to why the peacekeepers had been abducted and Kallon stated that they needed to be released.[3569] In light of the body of reliable evidence that Kallon was aware of and intended to coordinate a response to the deployment of the ZAMBATT peacekeepers, the Chamber finds this evidence unreliable.

1858. The Chamber therefore finds that on 3 May 2000 at Moria, Kasoma was taken by RUF fighters including Gbundema to Kallon, who was the RUF Commander who forced Kasoma at gun point to write the note to his 2 I/C.

11.1.6. Attacks against UNAMSIL after 3 May 2000

11.1.6.1. Attack on UN helicopter at Makeni on 7 May 2000

1859. On 7 May, two helicopters were dispatched in order to evacuate peacekeepers injured from the 2 May attacks in Makump and Magburaka. While the first helicopter was able to pick up injured peacekeepers in Magburaka,[3570] RUF fighters fired weapons at the second helicopter and impeded it from landing in Makeni. Eventually, the peacekeepers on the ground managed to repulse the RUF troops in order to clear an area for the helicopter to land. The helicopter collected the injured peacekeepers, but the RUF shot at it again after it took off and managed to hit it. The pilot succeeded in landing it some distance away in the bush. A short time thereafter the other helicopter from Magburaka arrived and rescued the damaged helicopter's occupants from the bush.[3571]

11.1.6.2. Attack on Indian QRC and KENBATT B Company on 9 May 2000

1860. On 3 May 2000, the QRC that had deployed from Freetown at the same time as the ZAMBATT and KENBATT peacekeepers who were abducted, arrived safely in Magburaka. As the situation in Magburaka stabilised following the attacks of 2 and 3 May 2000, on 8 May

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[3568] Transcript of 22 April 2008, DMK-161, pp. 30-35.
[3569] Transcript of 22 April 2008, DMK-161, pp. 34, 39. Although the witness stated that the abductions of the ZAMBATT peacekeepers occurred on 2 May 2000, the Chamber has found that these events occurred on 3 May 2000.
[3570] Transcript of 30 March 2006, Leonard Ngondi, p. 4.

2000 the QRC was ordered to move to Mile 91 along with Ngondi's KENBATT B Company. On 9 May 2000 the peacekeepers departed Magburaka, leaving KENBATT C Company positioned there.[3572]

1861. Following their departure, RUF Colonel Alfred Touray contacted the commanding officer of KENBATT C Company. He threatened that he was going to follow the departing peacekeepers to kill them all, and that upon his return he wanted all remaining peacekeepers to hand over their arms and ammunition and surrender.[3573] The officer reported this to Ngondi and told him that he could see trucks full of RUF fighters leaving Magburaka.[3574] The RUF successfully pursued the QRC and KENBATT B peacekeepers and attacked them. The peacekeepers managed to break past the RUF and arrived in Mile 91.[3575]

1862. When the attack was reported to Ngondi, he decided that his entire battalion would break out from RUF-controlled territory that same afternoon.[3576] The peacekeepers at Makeni (A Company, headquarter company, Ngondi's battalion headquarters and D Company)[3577] grouped together and moved northwards to Kabala, while the other company, C Company, moved northwards to Bumbuna.[3578]

11.1.7. UNAMSIL captives in Kono District

11.1.7.1. Peacekeepers captive at Yengema

1863. Kasoma and Mulinge were held at Pearson's house in Yengema for 23 days. During this time, they were permitted regular visits to the other peacekeepers in the school block, but were

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[3571] Transcript of 30 March 2006, Leonard Ngondi, pp. 3-5.
[3572] Transcript of 30 March 2006, Leonard Ngondi, pp. 5-7.
[3573] Transcript of 30 March 2006, Leonard Ngondi, p. 6.
[3574] Transcript of 30 March 2006, Leonard Ngondi, p. 7.
[3575] Transcript of 30 March 2006, Leonard Ngondi, p. 8.; Exhibit 381, Fourth Report of the UN Secretary-General on the UN Mission in Sierra Leone, dated 19 May 2000, p. 3580.
[3576] Transcript of 30 March 2006, Leonard Ngondi, pp. 7,8.
[3577] Transcript of 30 March 2006, Leonard Ngondi, p. 9.
[3578] Transcript of 30 March 2006, Leonard Ngondi, pp. 8-9. The Chamber heard evidence that the team moving to Kabala encountered several RUF checkpoints, ambushes, roadblocks and trenches. The RUF forcefully obstructed their movement and the peacekeepers were required to fight in order to move past. Upon reaching Kabala in Koinadugu District, KENBATT counted 8 injured soldiers among their troops: Transcript of 30 March 2006, Leonard Ngondi, pp. 9-10. The Chamber recalls its finding at the Rule 98 stage that no evidence was adduced in respect of Koinadugu District: Transcript 25 October 2006, Oral Decision on Rule 98, pp. 39-41. As it is unclear where these attacks occurred on the journey from Makeni to Kabala, the Chamber has not made Legal Findings in respect of this evidence.

not otherwise permitted to leave the house.[3579] The Brigade Commander for Kono visited on a daily basis. Sesay and Kallon visited about four times, accompanied on each occasion by around 30 to 40 heavily armed RUF fighters.[3580] Sesay came to Pearson's house to give her orders.[3581] Pearson told Kasoma and the other captive peacekeeper that she had to follow Sesay's instructions or face execution, in accordance with the RUF constitution.[3582]

1864. The Brigade Commander ordered that the peacekeepers at Yengema should be undressed and kept as enemies. On one occasion, Sesay arrived and collected the peacekeepers' passports and money.[3583] He instructed that they should be kept in strict confinement as "prisoners of war".[3584] The peacekeepers were not given bedding, nor were they able to bathe. They were given little food.[3585]

11.1.7.2. ZAMBATT peacekeepers captive at Tombodu

1865. In May 2000, RUF rebels brought 190 ZAMBATT peacekeepers in UN trucks to Tombodu.[3586] The captives were kept in a mosque in a suburb called Bendo.[3587] Some of these peacekeepers were transported from Yengema.[3588] The circumstances in which the remaining peacekeepers were abducted and transported to Tombodu have not been established on the evidence.

[3579] Transcript of 6 March 2008, DIS-310, p. 64.
[3580] Transcript of 22 March 2006, Edwin Kasoma, pp. 25-28, 39; Transcript of 6 March 2008, DIS-310, pp. 39, 41-43, 65, 132 (CS).
[3581] Transcript of 22 March 2006, Edwin Kasoma, p. 38; Transcript of 6 March 2008, DIS-310, p. 43 (CS).
[3582] Transcript of 22 March 2006, Edwin Kasoma, pp. 38-39.
[3583] Transcript of 22 April 2005, TF1-362, pp. 30-32 (CS).
[3584] Transcript of 22 April 2005, TF1-362, pp. 34-35, 38 (CS).
[3585] Transcript of 22 March 2006, Edwin Kasoma, pp. 40, 43-44.
[3586] The peacekeepers were counted by Colonel Gassimu: Transcript of 13 January 2005, TF1-304, pp. 51-52. *See also* Transcript of 24 January 2005, TF1-071, p. 3.
[3587] Transcript of 13 January 2005, TF1-304, p. 52-54; Transcript of 4 February 2005, TF1-012, p. 31.
[3588] *See* Transcript of 24 January 2005, TF1-071, pp. 2-3, where the witness states that peacekeepers were captured from Lunsar, Makeni and Magburaka and taken to Yengema in Kono District, where they were divided into two groups. The witness testifies that the senior Commanders were taken to Tombodu while the others were taken to Yengema. The Chamber finds, on the basis of the evidence that Kasoma and the KENBATT Sector Headquarters personnel were taken to Yengema, that the witness is mistaken in this aspect of his testimony and that in fact the senior peacekeepers were taken to Yengema. The Chamber further notes that Kasoma was reunited with his 2 I/C and 50 or 60 other peacekeepers in Koidu prior to their release from captivity, but that these peacekeepers had not been with Kasoma at Yengema: *infra* para. 1882.

1866. At the mosque, the peacekeepers were stripped of their uniforms and boots and beaten.[3589] They were not permitted to move around. Some civilians, acting on their own initiative, brought food to the peacekeepers as they had nothing to eat.[3590] The rebels were initially angered by this, but stopped when they realized they could not feed the Zambians themselves.[3591] Officer Med was in charge of the rebels in the village.[3592]

11.1.7.3. Peacekeepers captive at Small Sefadu

1867. During their stay at Small Sefadu, the UN captives were constantly harassed by armed RUF rebels, who would point weapons at them and accuse them of being responsible for causing problems between the peacekeepers and the RUF.[3593] They were occasionally given small quantities of food such as five tins of rice for twenty of them, which they cooked for themselves. Once every two or three days they were escorted by armed RUF guards to a nearby river to wash. As at Teko Barracks, the peacekeepers were not free to leave and were watched 24 hours a day.[3594]

1868. At one point, their room began to smell because the flesh in Mendy's injured leg had started to decompose and maggots had infested the wound.[3595] Someone would come every four days to clean Mendy's leg with Dettol.[3596] Mendy also received some cash, food and medication from an elderly Gambian man from Kono.[3597]

11.1.7.4. Charles Taylor instructs Sesay to release the UNAMSIL captives

1869. In May 2000, Charles Taylor requested Sesay to meet with him and sent a helicopter to Sierra Leone to transport Sesay to Liberia. Sesay informed Kallon that he was to meet Taylor and flew to Monrovia the following day. Taylor told Sesay that ECOMOG leaders wanted the

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[3589] Transcript of 13 January 2005, TF1-304, p. 53; Transcript of 4 February 2005, TF1-012, p. 31.
[3590] Transcript of 13 January 2005, TF1-304, pp. 53-54.
[3591] Transcript of 14 January 2005, TF1-304, pp. 117-118.
[3592] Transcript of 13 January 2005, TF1-304, p. 53.
[3593] Transcript of 20 June 2006, Ganese Jaganathan, pp. 46, 53-54.
[3594] Transcript of 20 June 2006, Ganese Jaganathan, pp. 46-47.
[3595] Transcript of 27 June 2006, Joseph Mendy, p. 28.
[3596] Transcript of 27 June 2006, Joseph Mendy, p. 28.
[3597] Transcript of 27 June 2006, Joseph Mendy, pp. 31-32.

captives released and he instructed Sesay to do so.[3598] Sesay returned to Sierra Leone the following day, and drove a group of the UNAMSIL captives to Kailahun the next morning.[3599]

11.1.7.5. Release of two groups of UNAMSIL captives from Yengema

1870. Approximately one week after their arrival, about 40 or 50 ZAMBATT personnel were released from Yengema.[3600]

1871. After Sankoh was arrested in Freetown on 17 May 2000,[3601] the treatment of the remaining UNAMSIL captives worsened.[3602] The RUF leadership within the Yengema area threatened that the prisoners could be killed at any time.[3603] Pearson told Kasoma that as long as Sankoh remained in detention, anything could happen to the UNAMSIL captives.[3604]

1872. About two weeks after their arrival at Yengema, a further 40 to 50 peacekeepers were released, leaving Kasoma and one other peacekeeper as the only captives at Yengema. Pearson indicated to them that their fate hinged on the release of Sankoh, and that they could face execution if he was not released.[3605]

11.1.7.6. Release of UNAMSIL captives from Small Sefadu

1873. On 12 May, 15 Kenyan peacekeepers were released from Small Sefadu and taken, according to the rebels, to a neutral ground to be freed.[3606]

1874. On 18 May 2000, Mendy was escorted from Camp 11 Small Sefadu to a hospital by members of the RUF.[3607] At the hospital, a man told Mendy: "My brother, you are in a critical condition. I will do my best to see if I can get in touch with General Issa Sesay for you to be evacuated from this position."[3608] After some time at the hospital, RUF fighters drove Mendy

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[3598] Transcript of 25 May 2007, Issa Sesay, pp. 87-89, 92.
[3599] Transcript of 25 May 2007, Issa Sesay, p. 89; Transcript of 21 March 2006, TF1-174, p. 64 (CS).
[3600] Transcript of 22 March 2006, Edwin Kasoma, p. 40; Transcript of 21 April 2005, TF1-362, pp. 38-39 (CS).
[3601] *Supra* para. 42.
[3602] Transcript of 22 March 2006, Edwin Kasoma, pp. 40-41.
[3603] Transcript of 22 March 2006, Edwin Kasoma, p. 41.
[3604] Transcript of 22 March 2006, Edwin Kasoma, p. 41; Transcript of 6 March 2008, DIS-310, pp. 129-131 (CS).
[3605] Transcript of 22 March 2006, Edwin Kasoma, pp. 42, 45.
[3606] Transcript of 20 June 2006, Ganese Jaganathan, p. 47.
[3607] Transcript of 27 June 2006, Joseph Mendy, p. 32; Transcript of 20 June 2006, Ganese Jaganathan, p. 47.
[3608] Transcript of 27 June 2006, Joseph Mendy, p. 33.

to a UN vehicle, in which one or two Zambian peacekeepers were waiting.[3609] A RUF driver took them to a helicopter which flew them to Liberia.[3610]

1875. After they arrived in Liberia at about 8:00pm, Mendy saw Taylor with many high ranking UNAMSIL officers. Mendy was given medication and a helicopter took him to Freetown, where he arrived on 28 May 2000. Mendy was handed over to the UN and taken to Choithram Hospital.[3611]

1876. On 20 May 2000, Jaganathan, Gjellesdad, Odhiambo and another KENBATT peacekeeper named Steven Moragie were taken from Small Sefadu to a location unknown to them, where they met 52 Zambian peacekeepers, escorted by several armed RUF rebels commanded by Colonel Lion.[3612] Lion told Jaganathan, Gjellesdad, Odhiambo and Moragie: "You are all fortunate to still be alive because of Charles Taylor; otherwise you all are dead meat."[3613]

1877. The 52 ZAMBATT peacekeepers told Jaganathan that they had been held captive for 18 days. Jaganathan described their state as "very pathetic": they had no footwear, they were very thin and all smelled bad. [3614]

1878. Jaganathan, Gjellesdad, Odhiambo and Moragie were taken with the 52 ZAMBATT personnel to Kailahun. With their arrival, there were a total of 84 peacekeepers in Kailahun.[3615]

1879. Jaganathan, Gjellesdad and Odhiambo were invited to stay overnight at a RUF rebel Commander's house, while the other peacekeepers were taken to a community hall at the rear of the house. The following afternoon, all of the UN peacekeepers were moved to a football field. Sesay arrived at the football field in an INDBATT vehicle. A helicopter then landed and its occupants, two people in black uniforms with the logo "Anti-Terrorist Unit", hugged and shook hands with Sesay.[3616]

[3609] Transcript of 27 June 2006, Joseph Mendy, pp. 33-35.
[3610] Transcript of 27 June 2006, Joseph Mendy, p. 34-35; Transcript of 25 May 2007, Issa Sesay, p. 89.
[3611] Transcript of 27 June 2006, Joseph Mendy, p. 35.
[3612] Transcript of 20 June 2006, Ganese Jaganathan, pp. 47-49.
[3613] Transcript of 20 June 2006, Ganese Jaganathan, p. 51.
[3614] Transcript of 20 June 2006, Ganese Jaganathan, p. 49.
[3615] Transcript of 20 June 2006, Ganese Jaganathan, pp. 49-50.
[3616] Transcript of 20 June 2006, Ganese Jaganathan, pp. 50-52.

1880. The UNAMSIL captives were transported by helicopter to Monrovia in two trips, and a UN aircraft transported them from Monrovia to Lungi on the evening of 21 May 2000.[3617]

11.1.7.7. Release of Peacekeepers in Tombodu

1881. Approximately one month after the arrival of the peacekeepers in Tombodu, TF1-304 heard on the radio that the peacekeepers should be released. RUF Colonel Gassimu arrived with vehicles, which the UN captives were made to board. Some peacekeepers were beaten by the rebels.[3618]

11.1.7.8. Release of Kasoma and Mulinge from Yengema

1882. On or about 26 May 2000, TF1-362 informed Kasoma and Mulinge that Sesay had sent his vehicle to pick them up. Kasoma and Mulinge were taken under supervision of RUF guards to Koidu, where they met Sesay along with many RUF fighters. Sesay gave instructions that the two peacekeepers should be transferred to a Zambian Land Rover, in which they were driven by RUF fighters for about 30 minutes to a location within Kono. They were joined there by a group of about 50 to 60 ZAMBATT peacekeepers, including Kasoma's second in command. The peacekeepers were not the same group that had been held in Yengema. The peacekeepers were transported to Pendembu, where a Liberian military helicopter picked them up and flew them to Monrovia airport.[3619]

1883. In Monrovia, they were taken for a medical examination and then to a hotel where they stayed one day before being flown by UN helicopter to Lungi.[3620] Once in Lungi, Kasoma was reunited with those peacekeepers who had been released earlier and met UN officials from Force Headquarters, before undergoing psychological counselling.[3621]

11.2. Legal Findings on Attacks Directed Against UNAMSIL Personnel

1884. The Prosecution alleges that between about 15 April 2000 and about 15 September 2000 the AFRC/RUF attacked, killed and took as hostages UNAMSIL peacekeepers and humanitarian assistance workers in locations within Sierra Leone including, but not limited to,

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[3617] Transcript of 20 June 2006, Ganese Jaganathan, p. 53; Transcript of 25 May 2007, Issa Sesay, p. 89.
[3618] Transcript of 13 January 2005, TF1-304, pp. 54-55; Transcript of 4 February 2005, TF1-012, p. 31.
[3619] Transcript of 22 March 2006, Edwin Kasoma, pp. 45-47.
[3620] Transcript of 22 March 2006, Edwin Kasoma, p. 48; Transcript of 25 May 2007, Issa Sesay, p. 89.

Bombali, Kailahun, Kambia, Port Loko and Kono Districts (Counts 15 to 18).[3622] The Chamber found at the Rule 98 stage that this pleading is sufficient to include evidence pertaining to Counts 15 to 18 in Tonkolili District.[3623]

1885. The Prosecution conceded during proceedings on the Defence motions for judgement of acquittal pursuant to Rule 98 that no evidence was adduced with respect to humanitarian assistance workers and that the evidence adduced in respect of Counts 15 to 18 pertained only to Bombali, Kailahun, Port Loko, Kono and Tonkolili Districts. The Prosecution further conceded that the evidence adduced in relation to Kailahun District pertained only to Count 18 of the Indictment.[3624]

1886. While the Prosecution has adduced evidence of attacks to UN installations, material and vehicles, the Chamber will make no Legal Findings with respect to these incidents as the Prosecution confined its allegation in the Indictment to attacks against UN personnel.[3625]

1887. The Chamber is satisfied that the perpetrators of the following crimes acted at all times with the requisite intent. In relation to Counts 15, 17 and 18, the Chamber recalls that a state of armed conflict existed in Sierra Leone from March 1991 until January 2002.[3626] In addition, the Chamber has found that a nexus existed between the attacks on the UNAMSIL peacekeepers and the armed conflict.[3627] The Chamber will consider the general requirements for Count 16 below.[3628]

[3621] Transcript of 22 March 2006, Edwin Kasoma, p. 48.
[3622] Indictment, para. 83.
[3623] *Supra* para. 46. *See also* Transcript 25 October 2006, Oral Decision on Rule 98, pp. 39-41, where the Chamber found that evidence had been adduced to support a conviction for Counts 15 to 18 in respect of conduct in Tonkolili District.
[3624] Transcript 25 October 2006, Oral Decision on Rule 98, pp. 39-41.
[3625] *Infra* paras 1913, 1914; *see* Indictment para. 83.
[3626] Judicial Notice Decision, Fact A.
[3627] *Supra* para. 990.
[3628] *Infra* paras 1946-1956.

11.2.1. Intentionally directing attacks against personnel involved in a peacekeeping mission in accordance with the Charter of the United Nations (Count 15)

1888. The Chamber is satisfied, recalling the establishment of the UNAMSIL mission by the Security Council, that it was a peacekeeping mission in accordance with the Charter of the United Nations.[3629]

1889. The Chamber recalls that an attack for the purpose of Count 15 is "an act of violence."[3630] The Chamber is mindful of the need to avoid an unduly restrictive interpretation of the elements of the offence, in order to give full effect to the fundamental protections to which peacekeepers are entitled when deployed on peacekeeping missions. Nonetheless, we observe that peacekeepers are by definition deployed in areas of actual or recent armed conflict, often in precarious situations before the warring factions have disarmed and while tensions remain high. It was never intended to make it an international crime for persons to express objection to or dissatisfaction with the work of peacekeepers. Consequently, we opine that threats alone do not suffice to prove an act of violence. While proof of actual physical injury or damage is not required, in our opinion, an act of violence against a peacekeeper requires a forceful interference which endangers the person or impinges on the liberty of the peacekeeper.[3631]

11.2.1.1. Attacks on 1 and 2 May 2000

1890. The Chamber recalls that RUF fighters directed the following six acts against UNAMSIL peacekeepers on 1 and 2 May 2000:

(i) Salahuedin was assaulted at the Makump DDR camp on 1 May 2000 by Kallon, who punched him in the face and attempted to stab him with a bayonet affixed to his rifle;[3632]

(ii) Jaganathan was beaten at the Makump DDR camp, forcibly abducted in Kallon's vehicle and taken to Teko Barracks and subsequently Small Sefadu

[3629] *Supra* paras 213-235 and 1749-1751.
[3630] *Supra* para. 220.
[3631] *See*, in this respect, Article 9(1)(a) of the Convention on the Safety of United Nations and Associated Personnel, which obliges States to criminalise attacks against the 'person or liberty' of any United Nations or associated personnel. Article 9(1)(c) further obliges States to criminalise threats to commit such attacks. The Chamber notes that this distinction suggests that the concept of attacks does not encompass threats thereof.
[3632] *Supra* para. 1791.

where he was held captive for approximately 3 weeks, being released on 21 May 2000;[3633]

(iii) Maroa and three other peacekeepers in a UN Land Rover were shot at, forcibly disarmed, beaten and taken to Teko Barracks and subsequently Small Sefadu where they were held captive. Although the evidence does not establish their release date, the Chamber is satisfied that the peacekeepers were released at some time in May or June 2000;[3634]

(iv) Gjellesdad and Mendy were captured in Makeni and taken to Teko Barracks and subsequently Small Sefadu where they were held captive for several weeks. Gjellesdad was released on 21 May 2000 and Mendy was released on 28 May 2000;[3635]

(v) Odhiambo and three other peacekeepers were captured and detained at Teko Barracks and subsequently Small Sefadu for approximately three weeks, with Odhiambo being released on 21 May 2000;[3636] and

(vi) Rono and three other peacekeepers were abducted outside the Magburaka Islamic Centre and held captive at Small Sefadu. Although the evidence does not establish their release date, the Chamber is satisfied that these peacekeepers were released at some time in May or June 2000.[3637]

1891. We find that the violent assault of Salahuedin constitutes an attack. In respect of the peacekeepers held captive at Teko Barracks and Small Sefadu, we find that the deprivation of their liberty is itself an act of violence which endured until such time as their release was secured. In addition, the peacekeepers at Teko Barracks were physical assaulted and forcefully restrained. At Small Sefadu, the RUF kept the peacekeepers under constant armed guard and threatened them with their weapons. Such conduct, which is no less effective than physical restraint in its result, we consider must be regarded as a forceful interference which endangered the person and impinged on the liberty of the UNAMSIL personnel.

1892. The Chamber further recalls the following actions by RUF fighters against UNAMSIL peacekeepers on 2 May 2000:

(i) Makump DDR Camp was attacked and ransacked, resulting in the death of Private Yusif and Wanyama and injury to seven peacekeepers;[3638]

[3633] *Supra* paras 1791-1794.
[3634] *Supra* paras 1795-1799.
[3635] *Supra* paras 1803-1806.
[3636] *Supra* paras 1807-1808.
[3637] *Supra* paras 1809-1811.
[3638] *Supra* paras 1823-1827.

(ii) Waterworks DDR camp was surrounded, forcing the KENBATT peacekeepers stationed there to abandon it and retreat to Magburaka Islamic Centre, in the course of which retreat three peacekeepers were wounded. In addition, two peacekeepers were killed and three peacekeepers injured when RUF fighters fired an RPG at the armoured vehicle in which they were attempting to escape. Lieutenant Kirimi and three other peacekeepers were captured as a result;[3639] and

(iii) The KENBATT base at Magburaka Islamic Centre was attacked and three peacekeepers were injured in the course of repelling the attack.[3640]

1893. Although the Prosecution did not adduce details on the precise actions of the RUF fighters, in recounting these events, witnesses used the word "attack" to describe the RUF maneuvering on their positions. We recall, moreover, that peacekeepers were injured or killed in each instance. We are therefore satisfied that RUF fighters directed acts of violence against the peacekeeping personnel in each of these camps.

1894. The Chamber accordingly finds that the assault of Salahuedin, the capture and detention of five groups of UNAMSIL peacekeepers, and the attacks on Makump DDR camp, Waterworks DDR camp and the Magburaka Islamic Centre all constitute attacks directed against UNAMSIL peacekeeping personnel The Chamber finds that on 1 and 2 May 2000 RUF fighters directed nine attacks against UNAMSIL peacekeeping personnel.

11.2.1.2. Attacks on 3 and 4 May 2000

1895. The Chamber recalls the following actions by RUF fighters against UNAMSIL peacekeepers on 3 and 4 May 2000:

(i) Kasoma and ten of his ZAMBATT peacekeepers were captured, forcibly disarmed and detained by 100 armed RUF fighters. Kasoma was held captive for 23 days, being released on or about 26 May 2000;[3641]

(ii) a convoy of around 100 peacekeepers following Kasoma was surrounded by approximately 1000 RUF fighters, forcibly disarmed and taken captive at Tombodu and Yengema. Although the evidence does not establish the precise release date of the peacekeepers from Yengema and Tombodu, the Chamber is satisfied that they were released at some time in May or June 2000;[3642] and

[3639] *Supra* paras 1828-1830.
[3640] *Supra* para. 1830.
[3641] *Supra* para. 1834-1835.
[3642] *Supra* paras 1836-1838.

(iii) RUF fighters attacked ZAMBATT peacekeepers in Lunsar, following which attack three peacekeepers were missing, two of whom never returned and were declared dead.[3643]

1896. The Chamber finds that the attack on ZAMBATT peacekeepers at Lunsar on 4 May 2000 constituted an act of violence.

1897. The abductions of the peacekeepers and their detention at Yengema and in Tombodu similarly constituted acts of violence. Although the Chamber accepts the evidence that the peacekeepers at Yengema were not beaten or physically restrained[3644] the Chamber emphasises that the absence of physical injury does not negate the existence of the attack, which derives its nature from the deprivation of the peacekeepers' liberty. Moreover, the peacekeepers were kept under constant armed guard; their belongings, including money and passports, were confiscated; they were stripped of their clothing; and some RUF fighters, including individuals armed with guns, threatened the peacekeepers with death.[3645]

1898. The Chamber therefore finds that RUF fighters directed three attacks against UNAMSIL peacekeeping personnel on 3 and 4 May 2000.

11.2.1.3. Attacks against UNAMSIL after 3 May 2000

1899. The Chamber finds that the actions of RUF fighters in firing weapons at a UN helicopter on 7 May 2000, thus impeding it from landing in Makeni,[3646] constitute an act of violence and therefore an attack directed against UNAMSIL peacekeeping personnel.

1900. The Chamber recalls that on 9 May 2000 RUF fighters pursued UNAMSIL peacekeepers from the Indian QRC and the KENBATT B Company and engaged them in gunfire near Magburaka.[3647] The Chamber finds that this violent conduct constitutes an attack directed against UNAMSIL peacekeeping personnel.

11.2.1.4. The RUF intended to make UNAMSIL personnel the object of the attacks

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[3643] *Supra* para. 1843.
[3644] Transcript 6 March 2008, DIS-310, p. 36. *See also* Sesay Defence Final Trial Brief, paras 1348-1350.
[3645] *Supra* paras 1840-1841.
[3646] *Supra* para. 1859.
[3647] *Supra* paras 1860-1862.

1901. The Chamber is satisfied that the perpetrators recognised and knew the UNAMSIL peacekeepers, who had been deployed in the Makeni-Magburaka area since January 2000. The Chamber recalls that RUF fighters, including Gbao, Kallon and Sesay, had had many interactions with them prior to the events of May 2000.[3648]

1902. The Chamber finds that RUF fighters specifically targeted UNAMSIL peacekeepers in each of the above attacks. Following the assault on Salahuedin and the abduction of Jaganathan, the RUF deliberately captured the three groups of peacekeepers who approached them to negotiate for Jaganathan's release: Maroa's group, Mendy and Gjellesdad, and Odhiambo's group. RUF fighters then succeeded in capturing Rono's group of peacekeepers by inviting them to meet under the false pretence of attempting to resolve the situation, only to forcibly seize and detain them after they accepted the invitation in good faith.

1903. Over the next ten days, RUF fighters committed attacks on UNAMSIL positions at Makump, the Islamic Centre and Waterworks; established roadblocks in order to lure the ZAMBATT contingent en route to Makeni into an ambush in two stages; opened fire on a UN helicopter; and launched offensive operations against UNAMSIL contingents in Lunsar and near Magburaka.

1904. These attacks were initiated in a geographically confined area of Sierra Leone between Lunsar in Port Loko District, Makeni in Bombali District and Magburaka in Tonkolili District. The Chamber has found that the attacks continued in Kono District, with the confinement of peacekeepers at Yengema, Small Sefadu and Tombodu. The Chamber considers that the fact that 14 attacks were committed in a brief period in such close proximity, with the captives transported to Kono District and placed under the command of the RUF Brigade Commander there, demonstrates that the RUF launched a deliberate and concerted campaign of violence against UNAMSIL peacekeeping personnel.

1905. The Chamber therefore finds that it is established beyond reasonable doubt that the RUF intended to make UNAMSIL peacekeepers the object of each of the 14 attacks.

11.2.1.5. Entitlement of UNAMSIL personnel to civilian protection

[3648] *Supra* paras 1772-1783.

1906. The Chamber recalls that the personnel of a peacekeeping mission are entitled to the protection afforded to civilians only insofar as the peacekeepers are not taking a direct part in hostilities.[3649] The Chamber will consider in this regard the totality of the circumstances surrounding the establishment, deployment and operation of the UNAMSIL mission in Sierra Leone and the interactions between UNAMSIL and the RUF in order to determine whether the UNAMSIL peacekeepers were taking direct part in hostilities at the time of the RUF attacks.

11.2.1.5.1. The mandate of UNAMSIL

1907. The Chamber finds that UNAMSIL was established by the United Nations Security Council as a peacekeeping mission in the exercise of its powers under Chapters VI of the UN Charter. UNAMSIL was impartial and deployed with the consent of the warring factions in accordance with Article XVI of the Lomé Agreement.

1908. In paragraph 14 of Resolution 1270, the Security Council empowered UNAMSIL pursuant to Chapter VII of the UN Charter to take "necessary action" to ensure the security of its personnel and the freedom of movement of its personnel and to protect civilians under threat of physical violence. We consider this paragraph as the "trigger" which empowered UNAMSIL personnel to use force, but only in these specific and defined circumstances. No other paragraph of this Resolution or the subsequent Resolution 1289 expands or creates additional grounds for the use of force. Indeed, UNAMSIL was not manned, equipped or trained to use force in any but the most limited of circumstances.[3650]

1909. The peacekeepers who testified were emphatic that UNAMSIL was a Chapter VI mission. From this starting point, one witness stated that paragraph 14 of Resolution 1270 functioned as a 'conditional clause' for Chapter VII powers, while another described its effect as creating a "chapter six and a half" mission.[3651] In our view, the nomenclature employed to describe the precise legal origin of the mandate to use force in self-defence is immaterial: the content of the mandate is the paramount consideration. Whether the UNAMSIL mandate

[3649] *Supra* para. 233.
[3650] *Supra* paras 1759-1760.
[3651] Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 75-81 (CS); Transcript 7 March 2008, DIS-310, pp. 6-8. *See also* Kallon Defence Final Trial Brief, para. 1339 *but see* paras 1358 *ff*.

permitted its peacekeepers to engage in hostilities and if so, in what circumstances, will depend on the proper construction of the terms of its mandate as expressed in relevant Security Council Resolutions.[3652]

1910. UNAMSIL's mandate was not to engage in hostilities against the parties to the conflict in Sierra Leone, but rather to preserve the ceasefire to which the parties had agreed and to facilitate the creation of lasting peace in Sierra Leone, chiefly but not exclusively through the disarmament, demobilisation and reintegration of the fighters. To this end, the mandate placed an emphasis on cooperation, negotiation and peaceful dispute resolution.[3653]

1911. We find that the fact that the peacekeepers were empowered under Chapter VII to use force in certain exceptional and restricted circumstances does not alter the fundamental nature of the UNAMSIL mission as a peacekeeping, and not a peace enforcement, mission. Instead, the reference to Chapter VII merely reinforces the right of the peacekeepers to use force in self-defence by grounding it in the binding powers of the Security Council.

11.2.1.5.2. UNAMSIL's Operational Orders and Rules of Engagement

1912. The nature of UNAMSIL's peacekeeping mandate and the scope of the power to use force is further clarified in its Operational Orders and Rules of Engagement (ROE). Operational Order 3, issued by the UNAMSIL Force Commander Major-General Jetley to implement UNAMSIL's mandate, noted that:

> In view of the volatility of the security situation and the fragility of the peace process the Force should be capable of operating on the basis of robust ROE as laid down by the UN. Though its functions will fall within the traditional limits of peacekeeping, it should be able to respond rapidly and effectively to any threat to the UN personnel, the implementation of its mandate, including, under specific conditions, the protection of civilians.[3654]

1913. The UNAMSIL ROE, which were distributed and explained to all UNAMSIL peacekeepers, set out the circumstances in which UNAMSIL peacekeepers were permitted to use force:

[3652] *Supra* para. 234.
[3653] Transcript of 23 March 2006, Edwin Kasoma, p. 123.
[3654] Exhibit 302, Operational Order No. 3, January 2000, para. 23.

1. To defend oneself, UN and other international personnel against hostile act or intent.

2. To resist abduction or detention of oneself, UN and international personnel.

3. To defend designated UN installation, other key designated installations, areas and goods designated by UN, civilian under imminent threat of physical violence in locations where [Government of Sierra Leone] protection is not immediately available.

4. To ensure security and freedom of movement of UNAMSIL personnel against anyone who limits or intends to limit UNAMSIL freedom of movement.

5. To maintain UNAMSIL position when threatened with hostile act/intent [...][3655]

1914. Further, the ROE provided the UNAMSIL personnel with specific and detailed instructions on the use of force, which included:

1. Try to resolve the potential hostile confrontation through negotiation or assistance of local authorities.

2. Carry out verbal negotiation and/or visual demonstrations, use unarmed force, display charging of weapons, fire warning shots at single shot as necessary to deter the hostile attack/intent [...]

3. Use force when absolutely necessary to safeguard own soldiers, UN and international personnel, civilians and designated installations, areas and goods in your care.

4. Be sure that you have compelling and sufficient evidence of hostile intent [...][3656]

1915. The ROE also provide directions on the proportionate use of force to ensure that the least possible injury is incurred to others and the level of force used is only that necessary to achieve the immediate aim of self-defence.[3657]

1916. The Chamber is of the opinion that the Security Council Resolutions establishing UNAMSIL as a peacekeeping force whose role was to assist in maintaining peace and not to take part in hostilities, clearly permit the use of force only in limited circumstances. Operational Order No. 3 confirms this position on the ground and the detailed instructions in the ROE further demonstrate that the use of force was a last resort option. The UNAMSIL

[3655] Exhibit 370, UNAMSIL Rules of Engagement, pp. 3-4.
[3656] Exhibit 370, UNAMSIL Rules of Engagement, pp. 1-2.
[3657] Exhibit 370, UNAMSIL Rules of Engagement, pp. 2-3.

peacekeepers were professional soldiers who received training on their mandate as peacekeepers prior to their arrival in Sierra Leone.[3658]

1917. The Chamber is therefore satisfied that comprehensive and rigorous institutional rules governed the discharge by UNAMSIL peacekeepers of their mandate and that principal among these was the rule that the peacekeepers were to use force only in self-defence, defence of civilians or to ensure freedom of movement of UN personnel. We find that the peacekeepers were prohibited from engaging in hostilities.

11.2.1.5.3. Practice of UNAMSIL and interactions with the RUF

1918. The Chamber is satisfied that the UNAMSIL peacekeepers did not engage in hostilities against RUF fighters or any other group in the execution of their duties in Bombali, Tonkolili and Port Loko Districts prior to 1 May 2000. The evidence demonstrates that UNAMSIL Commanders regularly met with the various leaders as part of the disarmament process and endeavoured to build constructive relationships with and among these groups. Particular efforts to facilitate peaceful cooperation had been made in relation to the RUF on account of the tensions present in their interactions with UNAMSIL. We find that these efforts were made both through institutional channels such as the Ceasefire Monitoring Committees and through *ad hoc* meetings arranged to address specific concerns, such as the meetings pertaining to Caritas in Makeni in April 2000.[3659]

1919. The Chamber notes that on 28 April 2000 Gbao reported to Sesay that a number of RUF fighters had recently attended a DDR "Committee Forum" in Makeni, at which:

> [T]he new DDR scheme was explained, a guide to the new scheme is enclosed for your information [...] The new scheme which does not required [sic] combatants to be compulsorily encamped, had been negotiated by RUFP in consultation with NCDDR. I trust that details will be of interest to you. Should you require any clarification on this matter I am available to meet with you to discuss your concern.[3660]

[3658] *Supra* para. 1760.
[3659] *Supra* paras 1775-1776.
[3660] Exhibit 33, RUF Radio Log Book, p. 8831-8832.

1920. The Chamber therefore finds that UNAMSIL peacekeepers repeatedly and peacefully informed the RUF leadership including Sesay, Kallon and Gbao that the disarmament process was voluntary and that no attempts had been made to forcibly disarm fighters.

1921. Peacekeepers were unanimous in their testimony that their mandate permitted them to use force only in strictly prescribed circumstances: in self-defence, if a civilian's life was threatened, or in order to ensure freedom of movement.[3661] Peacekeepers confirmed that the tasks and duties they carried out with UNAMSIL in Sierra Leone were in accordance with their mandate.[3662]

1922. The Chamber is therefore satisfied that the ten RUF fighters who disarmed on 27 and 28 April 2000 in Makeni did so voluntarily and that there was no forced disarmament of RUF fighters at either the Makump or the Magburaka DDR camps in May 2000.[3663]

1923. The Chamber finds that the practice of UNAMSIL in Bombali, Tonkolili and Port Loko Districts in the period leading up to May 2000 and during May 2000 was entirely consistent with its mandate. The Chamber considers that the allegations made by RUF leaders that fighters had been forcibly disarmed or attacked represented a deliberate attempt to foment hostility towards UNAMSIL personnel among the RUF rank and file, thereby preventing the UNAMSIL mission from carrying out its mandate.

11.2.1.5.4. Nature of UNAMSIL's arms and equipment

1924. We recall that we found that UNAMSIL peacekeepers were structured, equipped and organised for a peacekeeping mission and not for peace enforcement. The peacekeepers were lightly armed. The MILOBs were not armed at all. The UNAMSIL mission did not possess the military capability to cause significant damage to the RUF, if open combat were to arise.[3664]

[3661] Transcript of 22 March 2006, Edwin Kasoma, p. 7; Transcript of 20 June 2006, Ganese Jaganathan, pp. 109-116; Transcript of 19 May 2008, Mohammed Abdulahi Garbah, pp. 75-81 (CS); Transcript of 5 June 2008, Mohammed Abdulahi Garbah, p. 44 (CS).

[3662] Transcript of 28 March 2006, Brigadier Ngondi, p. 127; Transcript of 30 March 2006, Brigadier Ngondi, pp. 17-18; Transcript of 6 March 2008, DIS-310 (DMK-147), p. 72 (CS).

[3663] *Supra* paras 1782-1784. *See also* Transcript of 29 March 2006, Leonard Ngondi, p. 25; Transcript of 20 June 2006, Ganese Jaganathan, pp. 18-20; Transcript of 26 June 2006, Joseph Mendy, p. 98. The Chamber rejects the argument of the Kallon Defence that UNAMSIL peacekeepers adopted an "aggressive" stance which included the unprovoked use of force against RUF fighters: Kallon Final Trial Brief, paras 1356-1366.

[3664] *Supra* paras 1759-1760.

This is consistent with the prohibition on participation in hostilities in the peacekeepers' mandate, which permitted the use of force only in specific and limited circumstances.

11.2.1.5.5. Use of force by UNAMSIL against the RUF

1925. We have found that the use of force by peacekeepers in self-defence and in the discharge of their mandate was authorised by the Security Council in Resolution 1270. The Chamber recalls that the use of force for these limited purposes does not constitute direct participation in hostilities.[3665]

11.2.1.5.5.1. Attacks on 1 and 2 May 2000

1926. We recall that the peacekeepers did not violently intervene to prevent the assault of Salahuedin or the abduction of Jaganathan.[3666] Instead, Maroa attempted to negotiate.[3667]

1927. Although the RUF abducted Maroa's group, endangering their lives, three further successive groups of peacekeepers (Mendy and Gjellesdad, Odhiambo's group and Rono's group) were dispatched to attempt a peaceful resolution of the situation. The attack on Rono's group was carefully staged and executed in such a way that they were abducted under the pretence of peaceful discussions. Mendy and Gjellesdad, as MILOBs, were unarmed and Odhiambo's group did not carry arms specifically in order to demonstrate their peaceful intent. KENBATT Commander Ngondi believed that the situation could be defused and resolved, and his men were accordingly instructed to invite the RUF to release the peacekeepers and discuss their grievances with Ngondi himself.[3668]

1928. The peacekeepers responded to the attacks on their bases at Makump DDR camp and the Islamic Centre in Magburaka with the use of force. However, the Chamber is satisfied that this response was proportionate and entirely justified in self-defence. Groups of RUF fighters were assembled outside the Makump DDR camp on the morning of 2 May 2000, blocking the road and creating a hostile environment culminating in the attack in which peacekeepers were killed and injured. The evidence that Private Yusif was shot at point blank range indicates that

[3665] *Supra* para. 233.
[3666] *Supra* paras 1791-1793.
[3667] *Supra* para. 1795.
[3668] *Supra* paras 1803-1811.

the RUF fighters were acting offensively. Similarly, we find that it was RUF fighters who opened fire on the Islamic Centre in an attempt to capture the UNAMSIL post and its occupants.

1929. In relation to the attack on the DDR camp at Waterworks, the Chamber recalls that following the arrival of RUF fighters at the camp, the peacekeepers attempted to flee and RUF fighters shot at a retreating armoured vehicle and abducted three peacekeepers.[3669] This evidence establishes that the RUF forces were the offensive party. Although the evidence is unclear as to whether the UNAMSIL peacekeepers responded with force to the encirclement of their camp, the Chamber is of the view that such conduct would be well within their mandate in these circumstances.

1930. We therefore find that the peacekeepers did not resort to the use of force in response to the nine attacks directed against them on 1 and 2 May 2000.

11.2.1.5.5.2. Attacks on 3 and 4 May 2000

1931. The Chamber observes that ZAMBATT were not deployed to Makeni in an offensive mode, but rather their instructions were to defuse tension and stabilize the situation. Although Kasoma organised his troops into a "combat-ready" force, we are of the view that this action was appropriate in the context of the eruption of violence in the previous two days and in light of the information then received that the RUF had established roadblocks.[3670] The Chamber concludes that the ZAMBATT peacekeepers under the command of Kasoma did not use any force as they were ambushed and disarmed by a group of around 100 RUF fighters before they were able to respond in self-defence. This same pattern was repeated with the group of peacekeepers who followed. The hostile intent of the RUF is further manifested from the fact that Kasoma was forced at gunpoint to write a note to lure the remaining peacekeepers into an armed ambush.[3671]

[3669] *Supra* paras 1828-1830.
[3670] *Supra* para. 1832.
[3671] *Supra* para. 1835.

1932. While the ZAMBATT peacekeepers employed force in an unsuccessful attempt to repel the RUF attack on their positions at Lunsar,[3672] the Chamber is satisfied that the peacekeepers were then acting defensively to protect their own lives and that this was a necessary and proportionate response in the circumstances.

11.2.1.5.5.3. Attacks of 7 May and 9 May 2000

1933. The RUF attack on 7 May 2000 on the helicopter rescuing injured UNAMSIL personnel was not in response to any use of force by UNAMSIL peacekeepers.[3673] The Chamber is satisfied that any force used by the peacekeepers was necessary in self-defence to clear an area to ensure the safe landing of the helicopter and its occupants. The Chamber is further satisfied that the use of force by UNAMSIL peacekeeping personnel in the fighting which broke out between peacekeepers and the RUF on 9 May 2000 was in self-defence, as the evidence establishes that RUF fighters deliberately pursued the peacekeepers in order to attack them.[3674]

1934. The Chamber observes that following the attacks of May 2000, the Security Council passed Resolution 1313, which condemned "in the strongest terms" the armed attacks against and detention of UNAMSIL peacekeeping personnel as a threat to the security of UNAMSIL and the Republic of Sierra Leone. The Security Council expressed its intention to strengthen further the mandate of UNAMSIL, *inter alia*:

> To deter and, where necessary, decisively counter the threat of RUF attack by responding robustly to any hostile actions or threat of imminent and direct use of force.[3675]

1935. The Chamber regards this as further evidence that the actions of RUF fighters in the various attacks constituted a threat to the safety of UNAMSIL personnel to which their limited use of force in response in self-defence was both necessary and well within their mandate.[3676]

[3672] *Supra* para. 1843.
[3673] *Supra* para. 1859.
[3674] *Supra* paras 1860-1862.
[3675] Exhibit 170, UN SC Res. 1313, 4 August 2000, para. 3.
[3676] The Chamber accordingly rejects, on the totality of the evidence, the submission of the Kallon Defence that UNAMSIL peacekeepers had become fighters at the time of the attacks: Kallon Defence Final Trial Brief, paras 1357-1366.

1936. We find that the peacekeepers were at all times acting in self-defence and within the limits of their mandate as a peacekeeping force.

11.2.1.5.6. Finding on UNAMSIL's entitlement to civilian protection

1937. For the foregoing reasons, the Chamber finds that UNAMSIL personnel were not taking direct part in hostilities against the RUF at the time of the attacks. Their use of force in self-defence did not make them combatants. The Chamber is therefore satisfied that the peacekeepers were entitled in these circumstances to the protection guaranteed to civilians under the international law of armed conflict.

11.2.1.6. The RUF knew or had reason to know of UNAMSIL's protected status

1938. We are of the opinion that the Prosecution is not required to establish that the perpetrators had knowledge of the legal protections afforded to peacekeepers under international humanitarian law. Rather, this element of Count 15 will be made out where the perpetrators knew or had reason to know of the factual basis for the protection: that is, that the peacekeepers were not taking a direct part in hostilities at the time of the attack.

1939. Prior to the assault and abductions of 1 and 2 May 2000, UNAMSIL had deployed in the Makeni-Maburaka area as a peacekeeping force with light equipment and no visible capacity to engage in combat. The peacekeepers had repeatedly conveyed their peaceful intent to the RUF by approaching them unarmed; engaging them in discussions with a view to ascertaining the nature of their grievances; endeavouring to persuade them that their actions were not in the interests of peace; and refusing to respond with force to the repeated threats and deliberate acts of violence committed against other peacekeepers. The Chamber is satisfied that in such circumstances the perpetrators knew or had reason to know that the peacekeepers were not taking part in hostilities.

1940. In the abductions of 3 May 2000, the Chamber recalls that the RUF flagrantly deceived the UNAMSIL peacekeeping personnel by inviting peaceful interaction only in order to engage them in combat. Such deception demonstrates awareness on the part of the perpetrators of the peacekeepers' status as persons not taking part in hostilities and there intent to take advantage of this status.

1941. In the attacks of 2 May 2000, 4 May 2000, 7 May 2000 and 9 May 2000 in which the peacekeepers did use force, their actions were in response to aggression on the part of the RUF which endangered their lives and liberty. The evidence indicates that the purpose of the use of force by UNAMSIL personnel was to defend themselves; to defend personnel under their protection (including any disarmed fighters); and to escape from the RUF attack. Accordingly, we find that their conduct cannot reasonably be construed as taking part in hostilities. The fact that RUF fighters were injured and killed as a result of the peacekeepers' exercise of their right to self-defence does not alter this finding.

1942. The Chamber further finds that even if some or all RUF fighters did subscribe to a belief that the UNAMSIL peacekeepers were taking part in hostilities, the RUF fighters had reason to know of the peacekeepers' protected status, on account of UNAMSIL's mandate as originating in the Lomé Agreement; UNAMSIL's practices in Sierra Leone and interactions with the RUF in the preceding months; the nature of UNAMSIL's arms and equipment; and the use of force by peacekeepers only in self-defence. On the totality of the evidence, the actions of the peacekeepers in the circumstances were not reasonably capable of being construed as participation in hostilities.

1943. The Chamber is therefore satisfied that the RUF fighters who staged the attacks on UNAMSIL peacekeepers knew or had reason to know that the peacekeepers were not engaged in hostilities at the time.

11.2.1.7. Findings on Count 15

1944. The Chamber therefore finds that the Prosecution has established beyond reasonable doubt that RUF rebels intentionally directed 14 attacks against personnel involved in a peacekeeping mission conducted in accordance with the Charter of the United Nations, between 1 May 2000 and about June 2000, as charged in Count 15 of the Indictment.

11.2.2. Unlawful Killings (Counts 16 and 17)

1945. The Prosecution alleges that between about 15 April 2000 and about 15 September 2000, AFRC/RUF unlawfully killed UNAMSIL peacekeepers in Bombali, Kailahun, Kambia,

Port Loko and Kono Districts.[3677] In our Rule 98 Decision we found that the Prosecution had not adduced evidence of unlawful killings of peacekeepers in Kailahun, Kambia or Kono.[3678] Our findings will therefore relate only to Bombali and Port Loko District.

11.2.2.1. Murder of UNAMSIL personnel as a Crime Against Humanity (Count 16)

1946. The Prosecution has proved beyond reasonable doubt that a widespread or systematic attack was directed against the civilian population of Sierra Leone during the period from November 1996 until sometime in January 2000.[3679] We are of the opinion that in order to prove the elements of Count 16, the Prosecution must prove that the killings of UNAMSIL peacekeepers formed part of the widespread or systematic attack against the civilian population of Sierra Leone.

1947. The Chamber has found, in relation to Counts 3, 4, 6 to 8, 11 and 13 of the Indictment, that a multitude of abhorrent crimes were committed as part of this attack. The hallmarks of the attack included the indiscriminate targeting of civilians by AFRC/RUF fighters; the commission of crimes against large groups of civilians; the commission of crimes in the presence of other civilians who were forced to witness them; the sustained terrorisation of civilians by raping, killing and amputations and burning of civilian property in towns under AFRC/RUF control; the mass enslavement of civilians; and the targeting and punishment of civilians for perceived support for the AFRC and RUF's adversaries, including the Kabbah Government.[3680]

1948. We find, however, that the Prosecution has not established that AFRC/RUF fighters continued this pattern of killing, beating, raping, mutilating and enslaving masses of civilians in the period from February 2000 up to about 15 September 2000. The evidence of crimes committed in this period pertains entirely to those crimes committed against UNAMSIL peacekeeping personnel in the period from about 15 April 2000 to about 15 September 2000.

1949. For the purpose of the Indictment, the "civilian population of Sierra Leone" does not import a membership requirement based on vagaries such as birth, race, residence or

[3677] Indictment, para. 83.
[3678] Transcript 25 October 2006, Oral Decision on Rule 98, pp. 39-41.
[3679] *Supra* para. 951.
[3680] *Supra* paras 956-963.

membership of a particular group or organisation. We recall that the UNAMSIL peacekeepers were entitled to the same protection guaranteed to civilians under the law of armed conflict. We are of the opinion that for so long as the peacekeepers remained entitled to this status they must also be regarded as civilians for the purpose of crimes against humanity.

1950. However, in addition to civilian status, we opine that the factor determinative of membership in the civilian population of Sierra Leone for the purpose of the Indictment is whether the particular civilian was targeted as part of the widespread or systematic attack waged by the AFRC/RUF on the civilian population of Sierra Leone. The civilian population of Sierra Leone will comprise all civilians who are so targeted. This is the essence of the requirement that the perpetrator's act must *form part* of the attack on the civilian population. We consider that it is this condition which if fulfilled, and provided that the perpetrator is aware of it, elevates the act from a crime against one civilian to a crime against humanity.

1951. Thus, given that the RUF and AFRC waged a widespread or systematic attack against the civilian population of Sierra Leone in its entirety, we find it necessary to consider whether the attacks directed against the UNAMSIL peacekeepers meet this requisite element of forming part of this widespread or systematic attack.

1952. The Chamber considers that a reasonable doubt exists as to whether there is a sufficient nexus between the attacks by RUF fighters against UNAMSIL peacekeepers and the widespread or systematic attack they had conducted, with the AFRC, against the civilian population of Sierra Leone. The nature and purpose of the killings bears none of the hallmarks of the crimes committed as part of the widespread or systematic attack on the civilian population of Sierra Leone. The attacks against UNAMSIL personnel were geographically and temporally removed from the crimes against civilians which we have found proven in relation to the preceding Counts in the Indictment. The Prosecution has not adduced evidence to demonstrate that the peacekeepers were killed in connection with these previous crimes or the commission of further crimes against civilians.

1953. Thus, although the peacekeepers enjoyed civilian status, we find that the attacks against them were distinct from and did not form part of the widespread or systematic attack on the civilian population of Sierra Leone. Rather, the Chamber finds that the UNAMSIL peacekeepers comprised a distinct group of persons entitled to civilian status in Sierra Leone.

1954. We observe that there may have been a widespread or systematic attack against the peacekeepers, but not the civilian population of Sierra Leone as whole. The Prosecution submitted that the UNAMSIL peacekeepers formed a discrete civilian population and the actions of the RUF between 15 May 2000 and 15 September 2000 amounted to a widespread or systematic attack directed against this population.[3681] We find this submission to be inconsistent with proof of the requisite element of Count 16, that the attacks on peacekeepers formed part of the widespread or systematic attack on the civilian population of Sierra Leone.

1955. The Prosecution has not pleaded that an attack was directed against the UNAMSIL peacekeepers as a discrete civilian population. Paragraph 17 of the Indictment provides:

> 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.[3682]

1956. The Chamber therefore finds that the Prosecution has not proved beyond reasonable doubt that the killings of UNAMSIL peacekeepers by RUF fighters formed part of the widespread or systematic attack against the civilian population of Sierra Leone, and therefore that the Prosecution has not established beyond reasonable doubt the general requirements for crimes against humanity in relation to Count 16 of the Indictment.

11.2.2.2. Murder of UNAMSIL personnel as a War Crime (Count 17)

1957. The Chamber recalls that three ZAMBATT peacekeepers went missing during an RUF attack against the ZAMBATT contingent at Lunsar shortly after 3 May 2000. Two of these peacekeepers never returned and were eventually declared dead.[3683] There is no evidence as to whether the missing peacekeepers were injured in the attack, captured by the RUF or otherwise escaped. The Chamber finds that there is reasonable doubt as to whether these two peacekeepers were killed by RUF fighters.

1958. The Chamber further recalls that:

[3681] Prosecution Final Trial Brief, paras 1134-1138. We find that this submission significantly changes the nature of the Prosecution's case and it would be prejudicial to the Defence to permit the Prosecution to so depart from its pleadings.
[3682] Indictment, para. 17.
[3683] *Supra* para. 1843.

(i) KENBATT peacekeeper Private Yusif was killed by RUF fighters attacking Makump DDR camp on 1 May 2000 and another peacekeeper by the name of Wanyama died from gunshot injuries inflicted during the attack;[3684] and

(ii) two KENBATT peacekeepers were killed when RUF fighters fired an RPG at the armoured vehicle in which they were attempting to escape from the attack on Waterworks DDR camp on 2 May 2000.[3685]

1959. The Chamber has found that the peacekeepers who were killed were not taking an active part in hostilities and that the RUF fighters knew or had reason to know this. The Chamber is satisfied that a nexus existed between the killings and the armed conflict, as the killings occurred due to the hostile attitude of the RUF in relation to the disarmament programme.

1960. The Chamber therefore finds that RUF fighters unlawfully killed four UNAMSIL peacekeepers, as charged in Count 17 of the Indictment.

11.2.3. Abduction and holding as hostage of UNAMSIL personnel (Count 18)

1961. The Prosecution alleges that between about 15 May 2000 and about 15 September 2000, AFRC/RUF abducted hundreds of peacekeepers who were then held hostage in Bombali, Tonkolili, Port Loko, Kono and Kailahun Districts.[3686] The Chamber recalls that the general requirements for other serious violations of international humanitarian law under Article 4 of the Statute have been established in respect of the Indictment period.[3687]

1962. The Chamber finds that the Prosecution has proved beyond reasonable doubt that RUF fighters seized hundreds of UNAMSIL peacekeepers in eight attacks and detained them at locations including Teko Barracks in Makeni, Bombali District and Small Sefadu, Yengema and Tombodu in Kono District, thus fulfilling the first element of the offence of hostage taking as charged in Count 18 of the Indictment.

1963. We also find that there is evidence that RUF fighters threatened to kill, injure or detain captured UNAMSIL peacekeepers. Fighters including Kallon threatened to kill Major

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[3684] *Supra* paras 1823-1827.
[3685] *Supra* paras 1828-1830.
[3686] Indictment, para. 83.
[3687] *Supra* paras 989-990.

Jaganathan at least twice.[3688] After Sankoh's arrest, Kasoma and other captured peacekeepers at Yengema were repeatedly threatened and told that they could be killed at any time, their fates conditional on Sankoh's release.[3689]

1964. However, we find that these threats made to the captives do not suffice to prove the remaining elements of Count 18. The offence of hostage taking requires the threat to be communicated to a third party, with the intent of compelling the third party to act or refrain from acting as a condition for the safety or release of the captives.

1965. There is no evidence that the RUF stated to the Government of Sierra Leone, the UN or any other organisation, individual or group of individuals that the safety or release of the peacekeepers was contingent on a particular action or abstention. There is similarly no evidence of any conduct on the part of the RUF which could be construed as implicitly threatening to a third party that the peacekeepers would be harmed or communicating an implicit condition for their safety or release.[3690]

1966. The Chamber accepts the evidence of ZAMBATT detainees at Yengema that after the arrest of Foday Sankoh on 6 May 2000, their conditions of detention deteriorated.[3691] We observe that the RUF did not, however, abduct the peacekeepers in order to utilise their detention as leverage for Sankoh's release, as the peacekeepers were already being detained at the time of his arrest.

1967. Even if this intention crystallized in the minds of some or all of the RUF leaders once Sankoh was arrested, the RUF did not act to put it into effect. We find that there is no evidence that the RUF proposed any conditions pertaining to Sankoh, entered into negotiations with any entity, or communicated or interacted with any third party in a fashion that could be construed as impliedly creating a condition for the safety or release of the peacekeepers. Instead, the evidence shows that one group of approximately 40 to 50 peacekeepers were released from Yengema about five days after Sankoh's arrest and a further group of similar size were released about a week thereafter. Accordingly, the Chamber is of the

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[3688] *Supra* para. 1791.
[3689] *Supra* paras 1863-1864.
[3690] See, in this regard, submission of Sesay Defence Final Trial Brief, para. 1360.
[3691] *Supra* para. 1871.

view that the threats made to, and mistreatment inflicted on, the peacekeepers after 8 May 2000 were personal reactions of the RUF fighters to the arrest of Sankoh and did not form part of a concerted plan of action to secure his release.

1968. Similarly, the Chamber finds that the Prosecution has not established that the RUF detained the peacekeepers with the intention of compelling the Government of Sierra Leone and the UN to halt the disarmament process or to continue it according to conditions set by them.[3692] Despite the RUF grievances in relation to the disarmament process and the implementation of other aspects of the Lomé Agreement, we find that there is no evidence that the RUF orchestrated the abduction and detention of the peacekeepers, or prolonged their detention once abducted, in order to compel the Government or the UN to terminate the disarmament process or proceed with it differently.

1969. The Chamber therefore finds that the Prosecution has failed to prove an essential element of the crime of hostage-taking, namely, the use of a threat against the detainees so as to obtain a concession or gain an advantage. The Chamber accordingly finds that Count 18 has not been established beyond reasonable doubt.

[3692] We reject the Prosecution's submission to this effect: *see* Prosecution Final Trial Brief, para. 1158.

VII. RESPONSIBILITY OF THE ACCUSED

1. General Considerations

1970. The Prosecution has alleged that the Accused are individually criminally responsible for the crimes charged in Counts 1 to 18 of the Indictment pursuant to Article 6(1) of the Statute, by virtue of their participation in the crimes pursuant to the modes of liability articulated therein, or alternatively pursuant to Article 6(3) of the Statute, by virtue of their failure to prevent or punish the crimes of their subordinates. More specifically the Prosecution alleges

> **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.[3693]
>
> 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.[3694]

1971. In addition, we endorse the established jurisprudence that an accused may not be convicted under Article 6(1) and Article 6(3) in respect of the same conduct. The ICTY Appeals Chamber has held that:

> [I]t is not appropriate to convict under both Article 7(1) and Article 7(3) of the Statute. Where both Article 7(1) and Article 7(3) responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber should enter a conviction on the basis of Article 7(1) only, and consider the accused's superior position as an aggravating factor in sentencing.[3695]

[3693] Indictment, para. 38.
[3694] Indictment, para. 39.
[3695] *Blaskic* Appeals Judgement, para. 91.

1972. The Chamber is of the opinion that it would be inappropriate to hold a superior criminally responsible for ordering, planning, instigating or aiding and abetting the commission of crimes and at the same time reproach the superior for failing to prevent or punish the perpetrators.[3696] The Chamber's position on this issue is fortified by the Prosecution's pleading that superior responsibility under Article 6(3) of the Statute is only pleaded "in addition, or alternatively" to the individual responsibility under Article 6(1) of the Statute.

1973. As responsibility under Article 6(1) subsumes responsibility under Article 6(3) for the purpose of entering a conviction, the Chamber considers that it is neither necessary nor appropriate, in the interests of judicial efficiency, to debate the Accused's liability under both heads of responsibility.[3697] Although the Chamber has made detailed findings on the Accused's command roles within the RUF throughout the Indictment period,[3698] the Chamber will proceed to determine the Accused's superior responsibility under Article 6(3) of the Statute only in respect of crimes for which the Accused are not liable under Article 6(1).

2. Bo District from 1 June 1997 to 30 June 1997

2.1. Crimes Committed in Bo District

1974. The Prosecution alleges that the Accused are individually criminally responsible pursuant to Article 6(1) of the Statute, or alternatively Article 6(3) of the Statute, for the crimes committed in Bo District between 1 June 1997 and 30 June 1997.[3699] The Chamber recalls that the following crimes were committed:

2.1.1. Unlawful Killings (Counts 1 and 3 to 5)

(i) AFRC/RUF fighters killed an unknown number of civilians at Tikonko Junction; 14 civilians at a house in Tikonko; three civilians on the street in Tikonko; and approximately 200 other civilians during the attack on Tikonko on 15 June 1997 (Counts 1, 4 and 5);

[3696] *Blaskic* Trial Judgement, para. 337; *Stakic* Trial Judgement, para. 464.
[3697] *See Stakic* Trial Judgement, para. 466.
[3698] *See* Chapter 6, Section 1, The RUF Organisation and the AFRC/RUF Relationship.
[3699] Indictment, paras 38-39.

(ii) AFRC/RUF fighters committed extermination in Tikonko on 15 June 1997 (Count 3)

(iii) AFRC/RUF fighters killed Tommy Bockarie during the attack on Sembehun in June 1997 (Counts 1, 4 and 5); and

(iv) AFRC fighters killed Paramount Chief Demby, Pa Sumaili, five civilians near the market and an unknown number of other civilians during the attack on Gerihun on 26 June 1997 (Counts 1, 4 and 5).

2.1.2. Pillage (Count 14)

(i) Bockarie looted Le 800, 000 from Ibrahim Kamara in June 1997 in Sembehun (Count 14);

2.1.3. Acts of Terrorism (Count 1)

1975. In addition to the killings in Tikonko, Sembehun and Gerihun enumerated above, the Chamber has found that the following acts of terrorism were committed in Bo District:

(i) AFRC/RUF fighters terrorised the civilian population by burning more than 500 houses during the second attack on Tikonko on 15 June 1997 (Count 1); and

(ii) AFRC/RUF fighters terrorised the civilian population by burning over 30 houses in Sembehun (Count 1).

2.2. Responsibility under Article 6(1) of the Statute

2.2.1. Personal Commission

1976. The Chamber finds that Sesay, Kallon and Gbao did not personally commit any of the crimes in Bo District.

2.2.2. Commission through Joint Criminal Enterprise

2.2.2.1. Existence of a Common Plan

1977. The Prosecution has alleged that a joint criminal enterprise between the RUF and the AFRC commenced about 25 May 1997. The members of the joint criminal enterprise are alleged to have been senior leaders of the RUF, including Sesay, Kallon, Gbao, Bockarie and Sankoh;[3700] senior leaders of the AFRC including Johnny Paul Koroma, Gullit, Bazzy and Five-

[3700] Indictment, para. 34.

Five;[3701] and Charles Taylor.[3702] The goal of the alleged common enterprise was to take power and control over the territory of Sierra Leone, in particular the diamond mining areas, through conduct amounting to crimes within the Statute.[3703]

1978. We recall that, in order to establish the existence of a joint criminal enterprise, there must be a plurality of persons acting in concert in pursuance of a common plan whose purpose is either inherently criminal or which contemplates the realisation of an objective through conduct constituting crimes within the Statute.[3704]

1979. The evidence establishes that as early as 1991 high ranking members of the RUF, including the Accused, and subordinate fighters, had as their objective taking power and control over Sierra Leone. The Chamber finds that following the 25 May 1997 coup, high ranking AFRC members and the RUF leadership agreed to form a joint "government" in order to control the territory of Sierra Leone. The Chamber considers that such an objective in and of itself is not criminal and therefore does not amount to a common purpose within the meaning of the law of joint criminal enterprise pursuant to Article 6(1) of the Statute.[3705] However, where the taking of power and control over State territory is intended to be implemented through the commission of crimes within the Statute, this may amount to a common criminal purpose.

1980. The evidence shows that following the establishment of their joint regime, the first acts of the Junta were to suspend the Constitution of Sierra Leone, dissolve the Parliament and eject all political parties, and the Supreme Council assumed the sole authority to make laws and detain persons in the public interest.[3706] The strategy of the Junta was thenceforth to maintain its power over Sierra Leone and to subject the civilian population to AFRC/RUF rule by violent means. The Chamber is satisfied that the means agreed upon to accomplish these goals entailed massive human rights abuses and violence against and mistreatment of the

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[3701] Indictment, para. 34.
[3702] Indictment, para. 35.
[3703] Indictment, para. 36.
[3704] *Supra* para. 257.
[3705] *See also Martic* Trial Judgement, para. 442, in relation to a political purpose to unite areas with other ethnically similar areas in order to establish a unified territory.
[3706] Exhibit 149, Proclamation, Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation, 1997, Public Notice No. 3 of 1997, 28 May 1997; Transcript of 20 July 2006, TF1-371, p. 31 (CS).

civilian population and enemy forces.[3707] The AFRC/RUF forces cooperated on armed operations in which crimes against civilians were committed.[3708]

1981. In the Chamber's view, the conduct of these operations demonstrates that the Junta intended, through wholly disproportionate means, to suppress all opposition to their regime. The Chamber further finds that the AFRC/RUF alliance intended through the spread of extreme fear and punishment to dominate and subdue the civilian population in order to exercise power and control over captured territory.

1982. The means to terrorise the civilian population included unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9) and physical violence (Counts 10 to 11). Additional criminal means to achieve the common purpose included the enlistment, conscription and use of Child Soldiers (Count 12) as a mean to enforce the military components of the AFRC/RUF forces in order to assist in specific military operations; forced labour of civilians (Count 13) to perform farming, logistical chores or diamond mining which was necessary for the furtherance of the common purpose. In addition, the practice of pillage (Count 14) was endorsed and ordered or tolerated by senior RUF Commanders in order to serve as compensation to satisfy their fighters,[3709] and thereby furthered the common purpose, as it ensured the willingness of the troops to fight. The punishment of the civilian population for their alleged support of opposing forces was also a means to further the joint criminal enterprise. The Chamber, therefore, finds that the crimes charged under Counts 1 to 14 were within the joint criminal enterprise and intended by the participants to further the common purpose to take power and control over Sierra Leone.

1983. The evidence shows that the crimes contemplated within the joint criminal enterprise in order to maintain power over the territory of Sierra Leone commenced soon after the coup in May 1997. The Junta launched fierce attacks in Districts where its regime had not yet

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[3707] The AFRC/RUF soon began suppressing political dissent, civil society and student activism in Freetown. Numerous political demonstrators and journalists were arrested, some of whom were tortured, killed or detained: *See* Exhibit 181, NPWJ Conflict Mapping Report, pp. 24245, 24248.

[3708] *Supra* paras. 782-786, 'Operation Pay Yourself' in which looting of civilian property was sanctioned and encouraged; *supra* paras 1400-1401 showing evidence of mobilisation of AFRC soldiers from Liberia led by Foday Kallon. *See* Exhibit 181, NPWJ Conflict Mapping Report, p.24248; *see also* Transcript of 14 October 2004, George Johnson, pp. 23-24.

[3709] Transcript of 22 July 2005, TF1-360, p.24 (CS), stating that "in the guerrilla army soldiers were not paid, they lived on whatever they captured."

consolidated its power.[3710] In those attacks the criminal means mentioned in the paragraph above were used in order to further the criminal common purpose by consolidating the territorial control of the Junta after the coup.

1984. The Chamber finds that the common purpose of the joint criminal enterprise was furthered in Bo District through the following means:

(i) In order to ensure revenues as a vital source of income to the government, the Junta engaged in forced mining activity.[3711] However, the *modus operandi* entailed the commission of serious violence against the civilian population. Any resistance was met with brutal violence against the civilians. The AFRC and the RUF used the levers of State power in an attempt to destroy any support within the civilian population for the Kamajors.

(ii) In Bo District, in June 1997, also during the Junta period, fighters under Junta control launched an attack on Tikonko in which over 200 civilians were killed and 500 houses torched.[3712] A joint AFRC/RUF attack on Sembehun was also staged in which at least 30 civilian homes were burned.[3713] Gerihun was attacked by AFRC fighters and members of the Junta forces.[3714] These attacks were conducted on the premise that the civilians in these areas were Kamajor collaborators.

1985. The Chamber finds that during the Junta regime, high ranking AFRC and RUF members shared a common plan which was to take any action necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The Chamber finds that crimes were contemplated by the participants of the joint criminal enterprise to be within the common purpose. The Chamber further finds that joint AFRC/RUF forces targeted civilians in a widespread and systematic attack designed to terrorise the population into submission through collective punishment, unlawful killings, sexual violence and physical violence. In addition, the joint AFRC/RUF forces continued to rely on the forced labour of civilians to generate revenue, used children under the age of 15 years as fighters and generally accepted pillage as a means to gratify the fighters.

2.2.2.2. A Plurality of Persons

[3710] *Supra* para. 1139.
[3711] *Supra* para. 1088.
[3712] *Supra* para. 993-1005.
[3713] *Supra* para. 1006-1009.
[3714] *Supra* para. 1010-1014.

1986. Shortly after the AFRC coup was announced, RUF fighters and Commanders, including Sesay and Kallon, as well as Bockarie, Superman, Isaac Mongor, Mike Lamin, and Eldred Collins came from their bases across Sierra Leone to Freetown to join the Junta regime on the invitation of the AFRC and the instructions of Sankoh and Bockarie. In Freetown, senior members of the RUF, including Sesay, Kallon, Superman, Mike Lamin, Gibril Massaquoi and Eldred Collins were members of the AFRC Supreme Council alongside Johnny Paul Koroma, Gullit, Bazzy, Five-Five, Zagalo and others, including SAJ Musa, who served as Vice-Chairman in the absence of Sankoh and as Minister of Mines. Members of both factions participated in meetings of the Council. Gbao remained in Kailahun Town during this time. This arrangement crystallised shortly after 25 May 1997, when Sankoh accepted Johnny Paul Koroma's invitation and instructed the RUF to join the Junta Government.[3715]

1987. In addition to holding positions of responsibility in the Junta Government, and attending and participating in meetings of the AFRC Supreme Council, senior members of the RUF worked with their AFRC counterparts in Freetown and other locations throughout the country. Kallon, who had been based at Northern Jungle, Kangari Hills, was received by former SLA at Teko Barracks in Makeni, Bombali District on 3 June 1997.[3716] Other RUF fighters from Kangari Hills were welcomed by former SLA stationed in nearby Masingbi, Tonkolili District.[3717] RUF fighters from various areas arrived in Kenema District within a week of the coup[3718] and a joint AFRC/RUF administration was established in Kenema Town. RUF fighters joined SLA soldiers stationed at Bo Town immediately after the coup.[3719] By June 1997 Bo District was controlled jointly by AFRC and RUF forces.[3720]

1988. RUF officers were also deployed at Cokerill Barracks, the former SLA headquarters during the Junta period. Despite fighting alongside AFRC forces, however, RUF fighters were not formally integrated into the AFRC military structure.

[3715] Transcript of 7 November 2005, TF1-366, pp. 65-66 (CS); Transcript of 22 June 2007, Issa Sesay, pp. 30, 40-41; Transcript of 26 October 2007, DIS-188, p. 60 (CS).
[3716] Transcript of 11 April 2008, Morris Kallon, p. 102; Transcript of 22 April 2008, DMK-087, p. 90.
[3717] Transcript of 15 January 2008, DIS-214, pp. 42-44.
[3718] Transcript of 12 May 2005, TF1-125, p. 97; Transcript of 13 May 2005, TF1-125, p. 41.
[3719] Exhibit 181, NPWJ Conflict Mapping Report, p. 24245; Transcript of 7 December 2005, TF1-004, pp. 62-63, 70-71; Transcript of 21 April 2008, Hassan Deko Salu, pp. 48-49.
[3720] Transcript of 30 November 2005, TF1-054, p. 11 (CS).

1989. The Chamber has found that in September 1997 Bockarie left Freetown out of dissatisfaction with the RUF's limited military integration into the AFRC Junta fighting force and out of concern that he might be assassinated.[3721] While this incident strained the relationship between the two factions, we find that it did not impact on the common purpose and the cooperation between the leadership continued. Bockarie took up residence in Kenema Town, where he remained until the ECOMOG Intervention.[3722] From Kenema Town, Bockarie communicated over radio with RUF forces throughout the country[3723] and ensured that the AFRC/RUF cooperation continued. In Kenema Town the RUF and AFRC worked closely together[3724] and the forced mining activities were jointly conducted and controlled.[3725]

1990. The Chamber finds that the RUF, including in particular Sankoh, Bockarie, Sesay, Kallon, Superman, Eldred Collins, Mike Lamin, Isaac Mongor, Gibril Massaquoi and other RUF Commanders began working in concert with the AFRC, including at least Johnny Paul Koroma, Gullit, Bazzy, Five-Five, SAJ Musa, Zagalo, Eddie Kanneh and others to hold power in Sierra Leone on or shortly after the 25 May 1997. The Chamber, Justice Boutet dissenting, further finds that Gbao was also a participant to the joint criminal enterprise. The Chamber is, therefore, satisfied that the Prosecution has proved beyond reasonable doubt that the alleged joint criminal enterprise involved a plurality of persons. The Chamber is satisfied from the evidence that the three Accused, Justice Boutet dissenting in respect of Gbao, and the other listed individuals were all acting in concert.

1991. While the Chamber is of the view that the participants in a joint criminal enterprise should be identified as precisely as possible,[3726] we recognise that the identity of every member of the joint criminal enterprise need not be ascertained with certainty.[3727]

[3721] *Supra* para. 773.
[3722] Transcript of 29 July 2005, TF1-036, p. 30 (CS); Transcript of 8 May 2007, Issa Sesay, pp. 8-10; Transcript of 7 July 2005, TF1-122, p. 56; Transcript of 8 July 2005, TF1-212, p. 4; Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, pp. 56-57.
[3723] Transcript of 3 August 2005, TF1-036, pp. 66-67 (CS).
[3724] Transcript of 7 July 2005, TF1-122, p. 56; Transcript of 12 May 2005, TF1-125, pp. 12-13; Transcript of 8 July 2005, TF1-212, p. 4; Transcript of 29 July 2005, TF1-036, p. 30 (CS); Transcript of 29 April 2005, TF1-060, p. 47.
[3725] Transcript of 18 November 2005, TF1-045, pp. 68-69; Transcript of 20 July 2006, TF1-371, p. 53 (CS); Transcript of 25 October 2007, DIS-069, p. 31.
[3726] *Krnojelac* Appeal Judgement, para. 116.
[3727] *Limaj* Appeal Judgement, para. 104, *Vasiljevic* Appeal Judgement, paras 130, 142; *Krstic* Appeal Judgement, para. 143.

1992. The Chamber finds that there is insufficient evidence to conclude that between 25 May 1997 and 14 February 1998, mid- and low-level RUF and AFRC Commanders as well as rank-and-file fighters were themselves part of an agreement together with the more senior leaders of both movements to take control of the territory of Sierra Leone by means of the commission of crimes specified in the Statute. However, taking into account the entirety of the evidence and in particular the widespread and systematic nature of the crimes committed, the Chamber is satisfied beyond reasonable doubt that these individuals were used by said members of the joint criminal enterprise to commit crimes that were either intended by the members to further the common purpose, or were a natural and foreseeable consequence of the implementation of the common purpose.[3728] The Chamber is satisfied that the non-members who committed crimes were sufficiently closely connected to one or more members of the joint criminal enterprise acting in furtherance of the common purpose that such crimes can properly be imputed to all members of the joint criminal enterprise when the other conditions for liability are fulfilled.

2.2.2.3. Participation in the Common Plan

2.2.2.3.1. Sesay

1993. At the inception of the JCE on or about 25 May 1997, Sesay was a Lieutenant Colonel and BFC, making him effectively the second highest RUF officer in Sierra Leone after Bockarie. He had trained in the RUF military and political ideology at Camp Naama which qualified him as a Vanguard, a status of respect within the RUF movement.[3729]

1994. We are satisfied that Sesay continued to maintain his very senior position within the RUF following the coup. Sesay, together with Bockarie, approved the appointment of senior RUF Commanders to deputy ministerial positions within the Junta Government[3730] in order to

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[3728] *See Martic* Appeal Judgment, para. 171.

[3729] Transcript of 20 July 2005, TF1-360, p. 4 (CS); ; Transcript of 24 July 2006, TF1-371, pp. 93-94 (CS); Transcript of 4 May 2007, Issa Sesay, pp. 65-66; Transcript of 22 June 2007, Issa Sesay, p. 21; Transcript of 22 May 2007, Issa Sesay, p. 18; Transcript of 19 October 2007, DIS-069; Transcript of 24 January 2008, DIS-157, p. 55; Transcript of 14 February 2008, DIS-085 pp. 18-19 (CS); pp. 95-97. Exhibit 39, Proposal for the Tentative Integration of the People's Army into the National Army and the Political Circle, from the Military High Command and War Council, People's Army of Sierra Leone to Major Johnny Paul Koroma, signed by Issa Sesay on behalf of Sam Bockarie, 13 August 1997, p. 2890, [Proposal for Integration].

[3730] Exhibit 36, Salute Report of Sesay, p. 3; Transcript of 26 January 2005, TF1-071, pp. 35-36; Transcript of 31 July 2006, TF1-371, p. 114 (CS); Transcript of 3 August 2005, TF1-036, pp. 67-68 (CS); Transcript of 22 June 2007, Issa Sesay, p. 54; Transcript of 22 October 2007, DIS-069, p. 80.

integrate the RUF into the AFRC regime.[3731] He was a member of the AFRC Supreme Council and participated in the meetings of this body throughout most of the period of the Junta regime. In essence, he was one of the most important and influential RUF representatives on the Supreme Council.

1995. It is the Chamber's opinion that Sesay's position of command within the RUF as Lieutenant Colonel and BFC, the prestige he commanded as a Vanguard and his position of power and authority within the Junta Government coupled with his close relationship and proximity to the *de facto* Leader Bockarie are all considerations which are relevant in determining whether his actions amounted to a significant contribution to the joint criminal enterprise.[3732]

1996. The Chamber finds that, given his position of power, authority, and influence, including his role, rank, and close relationship and cooperation with Bockarie, Sesay contributed significantly to the joint criminal enterprise.

1997. Furthermore, the Chamber is satisfied that the government mining in Tongo Field provided an important source of revenue for the Junta Government and that this topic was discussed in AFRC Supreme Council meetings when Sesay was present.[3733] The sheer scale of the enslavement in Kenema District demonstrates that the forced mining was a planned and a systematic policy of the Junta Government devised at the highest level. The Chamber infers from the evidence that Sesay, as a member of the Supreme Council, was involved in the planning and organisation of the forced mining in Kenema District. The Chamber finds that Sesay, along with Bockarie, received diamonds from Tongo Field at the AFRC Secretariat.[3734] Eddie Kanneh, Secretary of State East for the Junta Government, arranged on one occasion for diamonds to be brought to him from Tongo Field so that they could be sold abroad in order to raise funds to purchase arms and ammunition. In addition, Sesay was personally engaged in mining for his personal benefit in Tongo Field.[3735]

[3731] Exhibit 39, Proposal for Integration, p. 2.
[3732] *See also Kvocka* Trial Judgement, para. 311.
[3733] Transcript of 20 July 2006, TF1-371, pp. 54-55 (CS).
[3734] Transcript of 20 July 2006, TF1-371, p.54 (CS); Transcript of 22 June 2007, Issa Sesay, p. 21; Transcript of 26 October 2007, DIS-188, pp. 45-51 (CS).
[3735] Transcript of 7 November 2005, TF1-366, pp. 91-94 (CS); Transcript of 18 November 2005, TF1-045, pp. 59, 77-78, Transcript of 10 July 2006, TF1-041, pp. 20-21.

1998. The Chamber therefore finds that Sesay made a significant contribution to the criminal means employed by the members of the joint criminal enterprise by his planning of the enslavement of civilian miners and the use of child soldiers to guard mining sites and force the miners to work at Tongo Fields.

1999. In addition, the Chamber finds that in Kenema District, Sesay directly participated and contributed to the common purpose by using his power and authority to compel his subordinates to arrest a suspected Kamajor supporter.[3736] Sesay used the levers of State power in an attempt to destroy civilian support for the Kamajors. In this respect, the Chamber has found that both Bockarie and Sesay used police officers, AFRC and RUF fighters to arrest and detain suspected Kamajor sympathisers and collaborators in Kenema Town. In certain instances, such individuals were detained without charges and seriously mistreated by Sesay.[3737]

2000. Sesay also participated in organising the availability of sufficient fighters for the RUF to allow them to maintain control over the civilian population and the captured territory. On Sesay's orders, from 1997 onwards, captured civilians were taken to Bunumbu for military training.[3738]

2001. It is the Chamber's finding that these criminal acts amount to a significant contribution to the joint criminal enterprise by Sesay who by his personal conduct furthered the common purpose by securing revenues, territory and manpower for the Junta Government and by aiming to reduce or eliminate the civilian opposition to the Junta regime.

2002. The Chamber further concludes that Sesay intended to take power and control over the territory of Sierra Leone, particularly the diamond mining areas, and actively participated in the furtherance of the common purpose and that by this participation he significantly contributed to the commission of acts of terrorism (Count 1), unlawful killings (Count 3 to 5) and pillage (Count 14) enumerated above as having been committed in Bo District between 1 June 1997 and 30 June 1997. The Chamber finds that Sesay shared with the other participants in the joint criminal enterprise the requisite intent to commit these crimes.

[3736] Transcript of 10 May 2005, TF1-129, pp. 67-69, 70-71 (CS).
[3737] *Supra* paras 1048-1053.
[3738] Transcript 20 April 2005, TF1-362, p. 32.

2.2.2.3.2. Kallon

2003. The Chamber finds that Kallon also participated and significantly contributed to the JCE in a number of ways.

2004. As a senior RUF official Kallon was one of the few RUF Commanders to be a member of the AFRC Supreme Council, which was a privileged position in the Junta governing body.[3739] Kallon attended AFRC Supreme Council meetings on a fairly regular basis.[3740] The Chamber considers that there is sufficient evidence to conclude that Kallon by his membership in the Supreme Council was involved in decisions or policy-making by the Supreme Council. In addition, Kallon cooperated with the AFRC at Teko Barracks and in Bo District. The Chamber is satisfied that he participated in concerted joint action between the AFRC and RUF. Even though this participation did not directly involve the commission of crimes, the Chamber recalls that it is not necessary for the participation to involve the commission of any crime,[3741] nor is it necessary for the accused to be present at the time a crime was committed.[3742] The determinative issue is whether Kallon's actions assisted or contributed to the common criminal purpose. The Chamber is satisfied that his involvement on the governing body of the Junta contributed to the joint criminal enterprise, as this body was involved in the decision-making processes through which the Junta regime determined how best to secure power and maintain control over the territory over Sierra Leone. The widespread and systematic nature of the crimes, in particular the attacks on Bo and the forced labour in Kenema District, in which the RUF was engaged indicate that such conduct was a deliberate policy of the AFRC/RUF that the Chamber finds must have been initiated by the Supreme Council, of which Kallon was a member.

2005. In addition to Kallon's participation in the Junta Government, we recall that he was also directly involved in the commission of crimes designed to further the common purpose of taking power and control over the territory of Sierra Leone, in particular at the diamond

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[3739] Exhibit 6, AFRC Council Members; Exhibit 119, AFRC Trial Transcript of 17 May 2005, TF1-334, p. 8; Transcript of 18 November 2005, TF1-045, p. 81 (CS); Transcript of 20 July 2006, TF1-371, p. 32 (CS); Exhibit 184, AFRC Minutes of 9 December 1997; Although Sesay is identified as a Colonel in Exhibit 6, the Chamber finds that he was a Lieutenant Colonel during the Junta period; Transcript of 4 May 2007, Issa Sesay, p. 89; Transcript of 22 October 2007, DIS-069, pp. 76-81.

[3740] *Supra* para. 774.

[3741] *Supra* para. 261. *Tadic* Appeal Judgement, para. 227; *Kvocka* Appeal Judgement, paras 99, 112; *Vasiljevic* Appeal Judgement, para 71; *Krajisnik* Trial Judgement, para. 884.

mining areas of Kenema District. Kallon used his bodyguards to force civilians to mine diamonds at Tongo Field, a practice which was prevalent among senior RUF and AFRC Commanders.[3743]

2006. The Chamber has also found that on two occasions, Kallon was present at the mining pits in Tongo Field when SBUs and other rebels shot into the pits, killing unarmed enslaved civilian miners.[3744] The Chamber finds that the killing of those civilians was part of the larger plan to terrorise the civilian population in order to suppress any opposition to the AFRC/RUF regime and that Kallon through his position and direct involvement at the diamond mines transformed this brutal policy into reality. The Chamber holds that Kallon endorsed the enslavement and the killing of civilians in order to control and exploit natural resources vital to the financial survival of the Junta Government.

2007. It is the Chamber's finding that these criminal acts amount to a significant contribution by Kallon which furthered the common purpose of the joint criminal enterprise by securing revenues, territory and manpower for the Junta Government, and by aiming to reduce or eliminate civilian opposition to Junta rule.

2008. The Chamber therefore concludes that Kallon intended to take power and control over the territory of Sierra Leone, in particular the diamond mining areas, that he actively participated in the furtherance of that common purpose and that his participation significantly contributed to the commission of acts of terrorism (Count 1), unlawful killings (Count 3 to 5) and pillage (Count 14) as enumerated above committed in Bo District between 1 June 1997 and 30 June 1997. The Chamber finds that Kallon shared with the other participants in the joint criminal enterprise the requisite intent to commit these crimes.

2.2.2.3.3. Gbao

2009. The Chamber, Justice Boutet dissenting,[3745] finds that Gbao participated and significantly contributed to the joint criminal enterprise in a number of ways.

[3742] *Kvocka* Appeal Judgement, paras 112-113.
[3743] Transcript of 18 November 2005, TF1-045, pp. 59, 77-78, Transcript of 10 July 2006, TF1-041, pp. 20-21; Transcript of 7 November 2005, TF1-366, pp. 91-94 (CS).
[3744] Transcript of 5 July 2005, TF1-035 p. 91-97. *See supra* paras 1664-1666.
[3745] Justice Boutet fundamentally dissents on paras 2009-2049, *infra*.

2010. We recall that Gbao was not a member of the AFRC/RUF Supreme Council and remained in Kailahun during the Junta regime. He was not directly involved or did not directly participate in any of the crimes committed in Bo District. However, the Chamber has found that Gbao was an ideology instructor and that ideology played a significant role in the RUF movement as it ensured not only the fighters' submission and compliance with the orders and instructions of the RUF leadership but also hardened their determination, their resolve and their commitment to fight to ensure the success and achievement of the ideology of the movement. It was in this spirit that the crimes alleged in the Indictment and for which the Accused are charged, were committed. Given this consideration, it is undeniable therefore, that the ideology played a central role in the objectives of the RUF.

2011. In making a determination on the participation of Gbao, the RUF ideology expert and instructor under the rubric of the JCE, the Chamber deems it necessary to address, *inter alia*, issues relating to the ideology of the RUF and how its content and philosophy impacted on its Commanders and fighters in their operational activities vis-à-vis their relationship with the civilian population.

2012. This RUF ideology, the Chamber finds, was imparted to the Special Forces who were so specially designated because they were trained in Libya. They included Foday Sankoh, Mike Lamin, Mohamed Tarawallie and Gibril Massaquoi. It was instituted and taught by the Special Forces like Mike Lamin in Camp Naama in Liberia to RUF trainees where the three Accused received their military and ideological training. As trainees from Camp Naama, they were designated as Vanguards in the movement. In the same pattern, those who eventually received the same military and ideological training from the Special Forces and the Vanguards in training camps within the territory of Sierra Leone were designated as Commandos. The Chamber has found that Gbao was responsible for the teaching of the ideology to the new commando recruits.

2013. The Chamber concedes that holding a revolutionary idea or an ideology to change a system as the RUF and Gbao did in this case, does not, in itself, amount to or constitute a crime.[3746] However, we are of the opinion that where the evidence establishes that there is a

[3746] *Prosecutor v. Kallon and Kamara*, Case No. SCSL-2004-15-AR72(E)/ SCSL-2004-16-AR72(E), Decisions on Challenge to Jurisdiction: Lomé Accord Amnesty ("Lomé Amnesty Decision"), para. 20, referring to M. N. Shaw,

criminal nexus between such an ideology and the crimes charged and alleged to have been committed, the perpetrators of those crimes should be held criminally accountable under the rubric of a joint criminal enterprise for the crimes so alleged in the Indictment. We recall the *Simic* Trial Judgement where the accused was held responsible for participating in a joint criminal enterprise for providing the "legal, political and social framework in which the participants of the JCE worked and from which they profited."[3747] We further recall the findings in the *Tadic* case that "while the defendant's involvement in the criminal acts must form a link in the chain of causation, it was not necessary that this participation be a *sine qua non*, or that the offence would not have occurred but for his participation."[3748] The Accused person does not need to have been present at the time of the crime.[3749] Therefore, the distance of Gbao to many of the crimes is not a reason for denying his participation under the basic form. What matters is that he intended or that it was foreseeable that he would further the joint criminal enterprise.

2014. In this regard, the relevant factors, amongst others, to be considered are Gbao's commitment to the RUF ideology; his role in propagating and implementing the said ideology as the propelling force behind the conflict; the nexus between the ideology and the joint criminal enterprise; the extent to which the crimes falling within the scope of the joint criminal enterprise were either within or were a natural and foreseeable consequences of the crimes, and how they directly or indirectly emanated from the ideology as the propelling force of the conflict, and the mainstay of the fighting force. In fact, the ideology was the source of a reinforced steadfastness and commitment by the Commanders and their fighters to the RUF in the pursuance of its major and identified goals until when they expected success to be achieved.

2015. Generally, the RUF ideology refers to the rationales, goals of the revolution and the means by which it should be implemented, as well as the military hierarchy, structure and

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International Law (5th ed., 2003) p. 1040, stating that: "Whether to prosecute the perpetrators of rebellion for their act of rebellion and challenge to the constituted authority of the State as a matter of internal law is for the state authority to decide. There is no rule against rebellion in international law."

[3747] *Simic* Trial Judgement, para. 158.

[3748] *Tadic* Appeal Judgement, para. 199.

[3749] *Tadic* Appeal Judgement, para. 991-992.

protocols governing the RUF's as a fighting force.[3750] Specifically, the political ideology of the RUF called for revolution through guerrilla warfare. It consisted in the use of weapons to seek total redemption and "to procure arms for a broad-based struggle so that the rotten and selfish government is toppled" and thereafter, to restore the economic well-being and prosperity of the allegedly oppressed and suffering people of Sierra Leone.[3751] In order to achieve this, an important component of the ideology is that "the masses knowing fully well that their needs are not met by government would organise themselves and form a sort of the People's Army."[3752]

2016. It indeed goes without saying and the Chamber so concludes that resorting to arms to secure a total redemption and using them to topple a government which the RUF characterized as corrupt necessarily implies the resolve and determination to shed blood and commit the crimes for which the Accused are indicted.

2017. The Prosecution in these proceedings tendered in evidence, the manuals and documents containing the said ideology in its various components.

2018. This, the Chamber finds, shows that in implementing their objectives, all means geared towards achieving this goal of "to procure arms for a broad based struggle so that the rotten and selfish government is toppled", were, to the Accused and to the perpetrators, as justified as the crimes they committed in that process as alleged in the Indictment. This objective which was propounded in the RUF ideology training manual was finally, and to their satisfaction, achieved by the AFRC coup of the 25 May 1997 to which the RUF hierarchy immediately adhered to and readily participated in the Junta Government.

2019. The Chamber is fortified in drawing this conclusion because by receiving and adhering to this ideology and imparting it to all recruits, the RUF and the Accused knew, ought to know, and are in fact presumed to have known, that the Commanders and the fighters under their control targeted, molested and killed innocent civilians who were not taking part in hostilities.

[3750] Exhibit 273, "Sierra Leone School Record and Diary", SCSL Registry p. 31046 [RUF Ideology School Book]; Exhibit 367, "Document With Various Internal RUF Information", SCSL Registry pp. 1-4 [RUF Internal Document]; Exhibit 38, "RUF Training Manual", SCSL Registry pp. 11070-11077 [RUF Training Manual].
[3751] RUF Training Manual, p. 11071.

2020. The Accused, their Commanders and their fighters perpetrated and committed these crimes by characterizing these civilians as collaborators of the "corrupt regime" which they were determined to topple by eroding or destroying through directly targeting and liquidating its innocent civilian power base in the course of the said "broad based struggle".

2021. The Chamber observes here that Exhibits 38, 273, and 367 relating to the RUF ideology contain some ideal, attractive and virtuous norms in that they proscribe and would not tolerate raping, looting not authorised by Commanders,[3753] killings or molestation of "liberated"[3754] civilians by any member of the RUF and that those who committed such violations would be visited with severe penalties including death.

2022. The Chamber, however, finds that those declared norms were only included to boost the domestic and international perception and image of the RUF, and were a mere farce intended to camouflage the planned enormity and gruesomeness of the ruthless brutality that characterized the actions of the RUF Commanders and their subordinates in the operational pursuance of the objectives of their "broad-based" armed struggle ideology. This is what guided and spirited the leadership of the RUF, its Commanders and fighters at the launching of their bloody crusade in Kailahun District in 1991, until the end of the conflict when victory was their hope and expectation.

2023. Arms and ammunition were an ideological pillar of the movement,[3755] as diamond mining was for the economic sustainability and survival of the movement.[3756] Though the stated aim of the RUF revolution may have focused on the will of the people,[3757] the capture and forced conscription of civilians was part of the organisation's way of operating from its earliest days.[3758] The ideology taught that the strength of a revolution relied on manpower;

[3752] RUF Training Manual, p. 11071.
[3753] RUF Ideology Schoolbook, pp. 30154-30155, points III and XVI.
[3754] RUF Ideology School Book, p. 31063 point 6.
[3755] RUF Training Manual, p. 11076.
[3756] RUF Training Manual, p. 11076.
[3757] RUF Training Manual, pp. 11074-11076; RUF Ideology School Book, p. 31051, 31053; RUF Internal Document, p. 3; Transcript of 24 July 2006, TF1-371, p. 66 (CS); Transcript of 22 April 2005, TF1-362, p. 67 (CS); Transcript of 26 June 2006, TF1-367, p. 33 (CS); Transcript of 19 October 2007, DIS-069, p. 49; Transcript of 29 October 2007, DIS-188, p. 75 (CS); Transcript of 5 November 2007, DIS-149, p. 24; Transcript of 26 November 2007, DIS-187, p. 95; Transcript of 11 April 2008, Morris Kallon, p. 53; Transcript of 21 April 2008, DMK-161, p. 120; Transcript of 5 May 2008, DMK-162, p. 41; Transcript of 6 June 2008, DAG-080, p. 5.
[3758] *See* Transcript of 2 March 2006, TF1-113, pp. 37-39 (CS); Exhibit 181, NPWJ Conflict Mapping Report, 10 March 2004, p. 21.

women and men, young and old.[3759] Many of the original Vanguards were forced into fighting for the RUF, including notably, Sesay, Kallon and Gbao.[3760] Often there was no alternative to accepting the RUF ideology.[3761] From its inception, the RUF adopted the strategy of the NPFL requiring that upon capturing a village, every member of that village, including the children, were involuntarily conscripted into the fighting forces.[3762]

2024. It was a tenet of the ideology that those who refused to join the organisation should be considered enemies.[3763] Civilian women were routinely raped during attacks, abducted from villages on the front lines and taken to serve as bush wives or sex slaves for RUF fighters. Civilians were targeted as a matter of course for killing and physical violence by fighters during RUF attacks. In the Chamber's considered view the political ideology of the RUF involved the commission of crimes under the Statute such as those alleged and charged in the Indictment, in pursuance of its revolutionary goals.

2025. The military ideology of the RUF required respect for the chain of command and the maintenance of discipline and order within the ranks.[3764] It also included certain tactical instructions,[3765] gave instructions on the proper comportment of fighters,[3766] and provided directions for peaceful interactions between fighters and civilians.[3767] The Chamber considers that the RUF's military ideology provided a degree of specialisation and organisation, which in turn allowed the RUF to engage in a joint criminal enterprise that utilised the commission of crimes under the Statute in order to take power and control in Sierra Leone, in particular its diamond mining areas.

[3759] Transcript of 4 October 2004, General John Tarnue, p. 120.
[3760] Transcript of 29 July 2005, TF1-036, p. 6 (CS); Transcript of 3 May 2007, Issa Hassan Sesay, p. 49; Transcript of 11 April 2008, Morris Kallon, pp. 50-51.
[3761] Transcript of 29 July 2005, TF1-036, p. 6 (CS).
[3762] Transcript of 4 October 2004, General John Tarnue, p. 62.
[3763] Transcript of 4 October 2004, General John Tarnue, p. 106; RUF Internal Document, p. 4.
[3764] RUF Ideology School Book, p. 31042-31043. *See also* RUF Internal Document, p. 7. On discipline, see Transcript of 22 May 2007, Issa Hassan Sesay, p. 113; Transcript of 6 June 2008, DAG-080, p. 5.
[3765] RUF Ideology School Book, p. 31042.
[3766] RUF Ideology School Book, p. 31042-31043. *See also* RUF Internal Document, p. 7. On discipline, see Transcript of 22 May 2007, Issa Hassan Sesay, p. 113; Transcript of 6 June 2008, DAG-080, p. 5.
[3767] RUF Internal Document, p. 4; Transcript of 3 April 2006, TF1-168, p. 62 (CS); Transcript of 26 June 2006, TF1-367, p. 33 (CS); Transcript of 11 July 2006, TF1-041, pp. 14-15 (CS); Transcript of 1 August 2006, TF1-371, p. 57 (CS); Transcript of 1 August 2005, TF1-036, p. 32 (CS); Transcript of 15 January 2008, DIS-214, p. 54 (CS); Transcript of 11 April 2008, Morris Kallon, p. 54; Transcript of 9 June 2008, DAG-080, p. 57.

2026. In the course of the trial the Chamber has heard extensive evidence on the RUF ideology and the part, if any, it played in the conflict culminating in the commission of the crimes that form the bases of the Indictment. In this regard the Chamber is of the view that the launching of the RUF movement was done with an ideology. The ideology consisted inter alia, in "the use of weapons to seek total redemption" and to "procure arms for a broad-based struggle so that the rotten and selfish government is toppled." This ideology was taught to all RUF military trainees.

2027. Indeed, the Chamber, Justice Boutet dissenting, takes the view that it is the objectives spelt in the ideology that guided and spirited the leadership of the RUF, the Accused Persons, the Commanders and their fighters, and reinforced their commitment to the movement and their steadfastness in combat in the pursuit of achieving the identified ideological goals of the RUF.

2028. Gbao singles himself out, the Chamber finds, Justice Boutet dissenting, as a very knowledgeable and competent Commander in the RUF ideology. He taught it in the RUF military training bases in Sierra Leone. For instance, the Chamber has found that the killing by Bockarie of 64 alleged Kamajors in Kailahun in the presence of Gbao and the killing by Major Rocky in Kono of about 40 innocent civilians who were innocently jubilating and publicly manifesting their support for ECOMOG for coming to save them from the RUF, had a nexus with the RUF ideological objective of toppling the "selfish and corrupt" regime by eliminating all those who supported that regime and who, a fortiori, were considered as enemies to the AFRC/RUF Junta alliance

2029. In fact, the Chamber, Justice Boutet dissenting, has further found that the crimes of widespread killings, rape, sexual violence, widespread "short sleeved and long sleeved" and "one love" amputations, extermination and acts of terrorism committed by the Accused and RUF fighters and for which they are charged, were in application and furtherance of the goals stipulated in the ideology of taking power and control over the territory of Sierra Leone. This, the Chamber finds, involved terrorising the civilian population by massively killing innocent civilians, pillaging and burning the houses of those they considered and branded as supporters of the "corrupt government" and enemies to the AFRC/RUF Junta.

2030. It is the Chamber's view, Justice Boutet dissenting, that the objectives stipulated in the RUF ideology remained the same and that they dictated the commission of the acts and crimes that are alleged even after the AFRC coup of the 25 May 2007 and for which the Accused are indicted.

2031. It is therefore, the Chamber's view, Justice Boutet dissenting, and in light of the foregoing, undeniable that the ideology played a key and central role central role in pursuing the objectives of the RUF and that it was a motivating and propelling dynamic behind the commission and perpetration of the several crimes charged in the Indictment and in respect of which the Accused stand indicted.

2032. On the basis of the foregoing, the Chamber, Justice Boutet dissenting, finds that there is convincing evidence to warrant the inference that without the ideology there would have been no joint criminal enterprise and that the revolution, of which the joint criminal enterprise was a key element, is a product of the ideology. In effect, the revolution was the ideology in action.

2033. Gbao's status, assignment, rank and personal relationship with Sankoh, as well as his knowledge of the RUF's ideology, are all factors that, in the Chamber's considered view, demonstrate that Gbao had considerable prestige and power within the RUF in Kailahun District.

2034. As OSC, Gbao had a supervisory role over the IDU, the MPs, the IO, and the G5. The IO was essentially an internal covert spy unit, the IDU investigated crimes, the MPs punished crimes and the G5 was responsible for the recruitment of civilian slave labour. Although the evidence is insufficient to conclude that Gbao had effective control over these units as OSC, his appointment to this position by Sankoh, his status as a Vanguard and his power to issue recommendations certainly gave him considerable influence over the decisions taken by these bodies.

2035. Gbao, as a Vanguard and OSC, was a "popular"[3768] and "effective Commander"[3769] who travelled widely in Kailahun District, visiting different areas behind the front lines, reporting

[3768] Transcript of 1 November 2007, DIS-188, p. 97.
[3769] Transcript of 1 November 2007, DIS-188, pp. 95-96.

on whether the MP and G5 units were doing their jobs and observing the conduct of investigations in order to ensure that the RUF ideology was put into practice.[3770] In effect, his supervisory role entailed, in great measure, the monitoring of the implementation of the ideology.[3771]

2036. There is ample evidence that civilians were enslaved and subjected to physical violence while working on RUF government farms.[3772] We are also satisfied that civilian farming in Kailahun District during the Junta period was coordinated by the RUF on a large scale and the produce used by the RUF in their operations[3773] and that Gbao was involved in the planning of the enslavement of civilians for those farms.

2037. Gbao also worked very closely with the G5 in Kailahun Town to manage the large-scale, forced civilian farming that existed in Kailahun between 1996 and 2001, including the period between 25 May 1997 and 14 February 1998. The produce from RUF government farms was collected by the G5 and given to Gbao, who in turn handed it over it to Sesay[3774] for commercialisation, though the RUF appointed business contractors, at mostly the Guinea, and at times, the Liberian border. In 1997 and 1998, Gbao met with civilian Commanders and instructed them about the quantities of produce civilians in their towns were to produce and labour they were to provide in support of the war. Civilians who refused to obey these instructions were severely punished.[3775] Produce was turned over to the G5 or S4 who organised civilians to carry them by foot from smaller centres to Gbao in Kailahun Town.[3776]

[3770] Transcript of 1 November 2007, DIS-188, p. 95-97.

[3771] Transcript of 1 November 2007, DIS-188, pp. 25-28

[3772] *See*, for example,: Transcript of 28 April 2005, TF1-114, pp. 57-61, 100 (CS); Transcript of 21 November 2005, TF1-045, p. 64; Transcript of 6 March 2006, TF1-113, pp. 32-38; Transcript of 13 March 2006, TF1-108, pp. 32-33; Transcript of 14 March 2006, TF1-330, pp. 26-27 (CS); Transcript of 16 March 2006, TF1-330, p. 56; Transcript of 2 June 2008, DAG-110, p. 57.

[3773] Transcript of 7 March 2006, TF1-108, pp. 103-106; Transcript of 13 March 2006, TF1-108, pp. 32-33, 35-38; Transcript of 14 March 2006, TF1-330, pp. 24-25, 27 (CS); Transcript of 16 March 2006, TF1-330, p. 56; Civilians who worked on RUF "government" rice farms did so under difficult conditions and were unable to refuse to work: Transcript of 14 March 2006, TF1-330, pp. 26-27 (CS); Transcript of 6 March 2006, TF1-113, pp. 32-38, 42; Transcript of 28 July 2006, TF1-371, pp. 122-124 (CS).

[3774] Transcript of 14 March 2006, TF1-330, p. 25. On the role of the G5 coordinating agricultural work, see Transcript of 2 June 2008, DAG-110, pp. 89-90; Transcript of 3 June 2008, DAG-048, pp. 93-94 and the findings *supra* paras 1417-1424.

[3775] Transcript of 7 March 2006, TF1-108, pp. 32-33; 93; Transcript of 14 March 2006, TF1-330, pp. 41-46; TF1-330 testified that farming produce was given to the G5: Transcript of 16 March 2006, TF1-330, p. 56.

[3776] Transcript of 10 March 2006, TF1-108, pp. 27; Transcript of 13 March 2006, TF1-108, pp. 28-33; Transcript of 14 March 2006, TF1-330, pp. 42, 45.

Civilians were also forced to work on Gbao's personal farm in 1997 and 1998.[3777] Gbao's bodyguard, Korpomeh, kept guard over the civilians.[3778] The food produced on these farms was exclusively for Gbao's use and the civilians were not paid for their labour.

2038. The Chamber is satisfied that there is compelling direct and circumstantial evidence to justify the inference that the ideology of the RUF, in its normative and operational settings, significantly contributed to the commission of the crimes falling within the joint criminal enterprise or were natural and foreseeable consequences of the same.

2039. We are also satisfied that Gbao's role in maintaining order in the fighting force as OSS Overall IDU Commander and his involvement in designing, securing and organising the forced labour of civilians to produce foodstuffs significantly contributed to maintaining the strength and cohesiveness of the RUF fighting force. In addition the Chamber finds that given his position of power and authority in Kailahun District, Gbao's failure to properly investigate allegations made by his ten year-old bodyguard that a civilian woman had "sabotaged" a mission, and his subsequent instruction that the woman should be publicly beaten,[3779] would have had a demonstrative effect, designed to compel the obedience of the civilian population in Kailahun District to RUF authority.

2040. The Chamber finds that Gbao did not share the intent of the principal perpetrators to commit the crimes committed against civilians under Counts 3 to 5 (unlawful killings), and Count 14 (pillage) in Bo District in furtherance of the joint criminal enterprise.

2041. As a staff Commander, Gbao did not have effective control over RUF fighters; his duty in this situation was to ensure that what, in the vocabulary of the ideology, were deemed to be crimes were investigated properly and to verify that arrests or punishments were carried out, and where they were not, to report this matter up the chain of command. Although the Chamber has heard general evidence that Gbao received reports from IDU agents,[3780] the Chamber has heard no credible evidence that would tend to indicate that Gbao actually

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[3777] Transcript of 10 November 2005, TF1-366, pp. 6-7 (CS); TF1-108 testified that Bockarie, Sesay, Kallon and Gbao had separate private farms in 1996, 1997, 1998 and 1999, but in 2000 the farms were combined. The civilians worked on the farms in each year; Transcript of 7 March 2006, TF1-108, p. 111-113; Transcript of 14 March 2006, TF1-330, p. 27; Transcript of 21 July 2007, TF1-371, p. 61.
[3778] Transcript of 7 March 2006, TF1-108, p. 113.
[3779] Transcript of 2 March 2006, TF1-113, p. 66-67.

received reports regarding unlawful killings. There is also insufficient credible evidence to prove that Gbao failed in his duty to ensure that investigations were properly undertaken, or that he failed to report punishments meted out or lack thereof up the chain of command until the time of the Intervention. The Chamber considers that Gbao's ability to exercise his powers effectively in areas where Bockarie ordered the commission of crimes is doubtful.

2042. In light of the whole of the evidence, the Chamber is not satisfied that there is a sufficient basis from which to infer that Gbao shared with the principal perpetrators the requisite intention to commit the crimes charged and proved under Counts 3-5 (unlawful killings) and Count 14 (pillage) in order to further the purposes of the joint criminal enterprise between 25 May 1997 and 19 February 1998.

2043. The Chamber is satisfied, however, that RUF fighters deliberately killed civilians on a massive scale during military attacks from the time of the initial invasion in 1991.[3781] We have found that individual civilians were deliberately and intentionally killed in Bo District and Kenema District as part of a widespread and systematic attack and that massive numbers of civilians were killed in the attack on Tikonko, Bo District.

2044. We note that the RUF ideology prohibited violence against civilians who had accepted the RUF's core beliefs.[3782] The Chamber finds this qualification to the prohibition on violence against civilians to be significant. Moreover, those who did not support the revolution were considered "enemies".[3783] It is our considered view that the RUF ideology divided civilians into two groups: those who supported the RUF, who were to be controlled and used in service of the revolution, and those who did not support the revolution and were, therefore, enemies to be defeated or eliminated by any available means including killing. Neutrality was not an option.

2045. This conclusion is reinforced by the fact that the G5, which managed the capture and deployment of civilians in furtherance of the RUF's goals, was considered to be a security

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[3780] Transcript of 3 June 2008, DAG-048, pp. 40-41; Transcript of 9 June 2008, DAG-101, pp. 103-105.
[3781] *See*, for example, Exhibit 181, NPWJ Conflict Mapping Report, 10 March 2004, pp. 24234-24242.
[3782] RUF Ideology School Book, p. 31050 points 3 and 4, p. 31063 point 6.
[3783] *See*, for example, RUF Ideology School Book, p. 31050 point XI: "Do not love to any of the women captured in bigger towns, they are the wives of the enemies and more over most of them are diseased with aids, gonorrhoea etc. Health is paramount."

agency falling under the purview of the OSC, along with the internal intelligence agencies and the military police. We consider that the existence of a category of potential civilian "enemies of the revolution" created an environment where the commission of crimes against certain groups of civilians was acceptable, and provided a theoretical justification for these abuses.

2046. Given Gbao's role as IDU Commander charged with investigating crimes against civilians, his role as OSC Commander which included overseeing the G5 and MPs, as well as his position as a Vanguard and a senior Commander in the RUF, the Chamber is satisfied that Gbao either knew or had reason to know that the deliberate, widespread killing of civilians occurred during RUF military assaults. Similarly, he knew or had reason to know that suspected Kamajor collaborators would be killed and that pillage took place during AFRC/RUF operations. Despite having knowledge that crimes were being committed by RUF fighters on a large scale, Gbao continued to pursue the common purpose of the joint criminal enterprise.

2047. In respect of Gbao's intent in relation to Count 1 (acts of terrorism), there is evidence that the burning of civilian houses and targeting of traditional civilian authorities was a tactic used by the RUF from 1991 onwards.[3784] However, the Chamber is not satisfied, on this evidence alone, that Gbao intended such acts to occur during the Junta period in furtherance of the joint criminal enterprise. Furthermore, the Prosecution has failed to adduce evidence of acts of terrorism in the parts of Kailahun District that were controlled by the RUF and where Gbao was located. The Junta Government exercised control over most of Sierra Leone, and the RUF forces acted jointly with the AFRC forces in relation to other locations in the country during the period in question. In this context, we find a prior pattern of conduct on the part of the RUF to be insufficient, without more, to demonstrate that it was reasonably foreseeable to Gbao that Bockarie and other members of the joint criminal enterprise would commit crimes with the specific intent of instilling terror in the civilian population.[3785] Accordingly, the Chamber finds that Gbao bears no responsibility for acts of terrorism (Count 1) in Bo District between 1 June 1997 and 30 June 1997.

[3784] Exhibit 181, NPWJ Conflict Mapping Report, 10 March 2004, p. 24235.
[3785] *See Karemera* Appeal Decision on Joint Criminal Enterprise, para 17.

2048. The Chamber, Justice Boutet dissenting, is therefore satisfied that the Prosecution has proved beyond reasonable doubt that Gbao willingly took the risk that the crimes charged and proved under unlawful killings (Count 3 to 5) and pillage (Count 14), which he did not intend as a means of achieving the common purpose, might be committed by other members of the joint criminal enterprise or persons under their control.

2049. The majority of the Chamber, Justice Boutet dissenting, therefore finds that Gbao is criminally responsible for the crimes enumerated above in relation to Bo District and proved under unlawful killings (Count 3 to 5) and pillage (Count 14), to have occurred between 1 June 1997 and 30 June 1997 as a member of the joint criminal enterprise.

3. Kenema District from 25 May 1997 to 19 February 1998

3.1. Crimes Committed in Kenema District

2050. The Prosecution alleges that the Accused are individually criminal responsible pursuant to Article 6(1) of the Statute and, or in addition, Article 6(3) of the Statute for the crimes committed in Kenema District between 25 May 1997 to 19 February 1998. The Chamber has found that the following crimes were committed:

3.1.1. Unlawful Killings (Counts 1 to 5)

(i) AFRC/RUF fighters killed B.S. Massaquoi, Andrew Quee and four other civilians on the orders of Bockarie in Kenema Town on or about 8 February 1998 (Counts 1 to 2 and 4 to 5);

(ii) AFRC/RUF fighters killed Mr Dowi in Kenema Town (Counts 4 and 5);

(iii) AFRC/RUF fighters killed three civilians at a house on Mambu Street, Kenema Town (Counts 1 to 2 and 4 to 5);

(iv) Bockarie killed a civilian farmer at the NIC building in Kenema Town (Counts 1 to 2 and 4 to 5);

(v) AFRC/RUF fighters killed a civilian accused of being a Kamajor boss in Kenema Town (Counts 1 to 2 and 4 to 5);

(vi) AFRC/RUF fighters killed Bonnie Wailer and two others on the orders of Bockarie in Kenema Town (Counts 4 and 5);

(vii) Bockarie or AFRC/RUF fighters under his command killed two alleged thieves in Kenema Town (Counts 4 and 5);

(viii) AFRC/RUF fighters killed a Limba man in Tongo Field (Counts 4 and 5);

(ix) AFRC/RUF fighters killed a civilian at Lamin Street in Kenema Town (Counts 1, 4 and 5);

(x) AFRC/RUF fighters killed over 20 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5);

(xi) AFRC/RUF fighters killed 25 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5);

(xii) AFRC/RUF fighters killed 15 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5);

(xiii) AFRC/RUF fighters killed 3 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5); and

(xiv) AFRC/RUF fighters committed extermination by killing over 63 civilians at Cyborg Pit in Tongo Field (Count 3).

3.1.2. Physical Violence (Counts 1 to 2 and 11)

(i) AFRC/RUF fighters beat TF1-122 in custody in Kenema Town (Count 11);

(ii) AFRC/RUF rebels, including Sesay, repeatedly inflicted physical violence on TF1-129 during his initial arrest in Kenema Town (Counts 1 to 2 and 11);

(iii) RUF members under the command of Bockarie beat B.S. Massaquoi, Andrew Quee, Brima Kpaka, TF1-129, Paramount Chief Moinama Karmoh and four others in January 1998 in Kenema Town (Counts 1 to 2 and 11); and

(iv) AFRC/RUF rebels including Bockarie beat B.S. Massaquoi and five other civilian detainees on 5 February 1998 in Kenema Town (Counts 1 to 2 and 11).

3.1.3. Enslavement (Counts 1 and 13)

2051. The Chamber had found that AFRC/RUF rebels forced an unknown number of civilians to mine for diamonds at Cyborg Pit in Tongo Field between about 1 August 1997 and about 31 January 1998, constituting enslavement and an act of terrorism as charged in Counts 1 and 13 of the Indictment.

3.2. Responsibility under Article 6(1) of the Statute

3.3. Personal Commission

3.3.1.1. Sesay

2052. The Chamber recalls that Sesay participated in the beating of TF1-129 in Kenema Town by threatening TF1-129 and firing his gun between TF1-129's legs.[3786] Without diminishing the seriousness of Sesay's conduct, we do not consider this conduct, when taken alone, to be of sufficiently similar gravity to the crimes articulated in Article 2(a) to Article 2(h) of the Statute to constitute commission of an inhumane act. Rather, we have found that Sesay's conduct and the subsequent severe beatings of TF1-129 during his arrest cumulatively amount to an inhumane act as charged in Count 11.[3787] As the evidence does not establish beyond reasonable doubt that Sesay personally committed the beatings that followed, we will determine Sesay's liability for this crime consistently with our findings on joint criminal enterprise.

3.3.1.2. Kallon and Gbao

2053. The Prosecution has not proven beyond reasonable doubt that Kallon or Gbao personally committed any of the crimes in Kenema District.

3.4. Commission through Joint Criminal Enterprise

3.4.1.1. Existence of a Common Plan and Plurality of Persons

2054. All the crimes alleged to have been committed in Kenema District fall within the time period of the Junta Government and we find that the common plan and the plurality of participants remained the same.

3.4.1.2. Participation

3.4.1.2.1. Sesay and Kallon

2055. It is the Chamber's finding that the acts committed by Sesay and Kallon and described above with respect to Bo District amount to a significant contribution to the furtherance of the common purpose by securing revenues, territory and manpower for the Junta Government, and by implementing the policy of eliminating civilian opposition to the Junta regime. We find

[3786] *Supra* paras 1048-1053.
[3787] *Supra* paras 1111-1112.

that the above findings in relation to the participation and significant contribution of Sesay and Kallon apply *mutatis mutandis* to the crimes committed in Kenema District.[3788]

2056. The Chamber therefore concludes that Sesay and Kallon intended to take power and control over the territory of Sierra Leone, in particular the diamond mining areas, and actively participated in the furtherance of the common purpose and that by their participation, they significantly contributed to the commission of acts of terrorism (Count 1), collective punishments (Count 2), unlawful killings (Count 3 to 5), physical violence (Count 11), enslavement (Count 13) and pillage (Count 14) as enumerated above which were committed in Kenema District between 25 May 1997 and 19 February 1998. The Chamber finds that both Sesay and Kallon shared, with the other participants, in the joint criminal enterprise the requisite intent to commit these crimes.

3.4.1.2.2. Gbao

2057. It is the Chamber's finding, Justice Boutet dissenting, that the acts by Gbao amount to a significant contribution to the furtherance of the common purpose.[3789] We find that the above findings in respect of Bo District of his participation and significant contribution apply *mutatis mutandis* to the crimes committed in Kenema District.

2058. In addition, and in respect of Count 11[3790] and Count 13 in Kenema District, we recall our finding that the existence of a category of potential civilian "enemies of the revolution" created an environment where the commission of crimes against certain groups of civilians was acceptable, and provided a theoretical justification for these abuses. The Chamber is therefore satisfied that Gbao either knew or had reason to know that the deliberate, widespread physical violence against civilians occurred during RUF military assaults. Similarly, he knew or had reason to know that suspected Kamajor collaborators would be killed or that great suffering or serious physical injury would have been inflicted upon these individuals. We also find that he knew or had reason to know that civilians were enslaved in order to pursue the common purpose. Despite knowing that unlawful killings (Counts 3 to 5), physical violence (Count 11)

[3788] *See supra* paras 1993-2002 in respect of Sesay and paras 2003-2008 in respect of Kallon.
[3789] Justice Boutet fundamentally dissents on paras 2057-2061.
[3790] The Chamber has found that it will only consider Count 11 in Kenema District, *supra* paras 178, 1109.

and enslavement (Count 13) were being committed by RUF fighters on a large scale, Gbao continued to pursue the common purpose of the joint criminal enterprise.

2059. The Chamber recalls its finding above on Count 1 and finds that this applies *mutatis mutandis* to Kenema and that Gbao is not responsible for acts of terrorism in Kenema District. For similar reasons, the Chamber finds that it was not reasonably foreseeable to Gbao that Bockarie and other members of the joint criminal enterprise would commit crimes with the specific intent of punishing civilians collectively for acts that they may or may not have committed. Accordingly, it finds that Gbao is not responsible for collective punishments (Count 2) in Kenema District.

2060. The Chamber, Justice Boutet dissenting, is therefore satisfied that the Prosecution has proved beyond reasonable doubt that Gbao willingly took the risk that the crimes charged and proved under Counts 3 to 5 (unlawful killings), Count 11 (physical violence) and Count 13 (enslavement) which he did not intend as a means of achieving the common purpose, might be committed by other members of the joint criminal enterprise or persons under their control.

2061. The majority of the Chamber, Justice Boutet dissenting, therefore, finds that Gbao as a member of the joint criminal enterprise is criminally responsible for the crimes enumerated above in relation to Kenema District and proved under Counts 3 to 5 (unlawful killings), Count 11 (physical violence) and Count 13 (enslavement) to have occurred between 1 June 1997 and 30 June 1997.

4. Kono District from 14 February 1998 to January 2000

2062. The Prosecution alleges that the Accused are individually criminally responsible pursuant to Article 6(1) of the Statute and, or in addition, Article 6(3) of the Statute for crimes committed in Kono District between about 14 February 1998 and about 30 June 1998.

4.1. Crimes Committed in Kono District

4.1.1. Crimes Committed from 14 February to 30 April 1998

2063. The Chamber has found that the following crimes were committed during the period from 14 February 1998 and the end of April 1998, which period we have found corresponds to the continuation of the AFRC/RUF joint criminal enterprise:

4.1.1.1. Unlawful Killings (Counts 1 to 5)

(i) AFRC/RUF fighters killed an unknown number of civilians during the February/March 1998 attack on Koidu Town (Counts 1, 4 and 5);

(ii) RUF fighters acting on the orders of Officer Med killed Chief Sogbeh at Tombodu at sometime in February/March 1998 (Counts 1, 4 and 5);

(iii) AFRC/RUF fighters under the command of Savage killed about 200 civilians in Tombodu between February and March 1998 (Counts 1, 2, 4 and 5);

(iv) AFRC/RUF fighters under the command of Savage killed about 47 civilians in Tombodu between February and March 1998 (Counts 1, 4 and 5);

(v) AFRC/RUF fighters under the command of Savage killed three civilians in Tombodu sometime in March 1998 (Counts 1, 4 and 5);

(vi) AFRC/RUF fighters under the command of Savage killed an unknown number of civilians by burning them alive in a house in Tombodu about March 1998 (Counts 1, 4 and 5);

(vii) AFRC/RUF fighters under the command of Savage committed extermination in Tombodu between February and March 1998 (Count 3);

(viii) RUF Commander Rocky killed 30 to 40 civilians in April 1998 in Koidu Town (Counts 1, 2, 4 and 5);

(ix) RUF Commander Rocky committed extermination in April 1998 in Koidu Town (Count 3)

(x) Fighters under the command of Rocky killed by a fifteen year old boy by amputating his arms and feet in April 1998 in Koidu Town (Counts 1, 4 and 5);

(xi) AFRC/RUF rebels killed six captured civilians in Yardu in April 1998 (Counts 1, 4 and 5); and

(xii) AFRC/RUF fighters killed at least 29 civilians in Penduma on orders of Staff Alhaji in April 1998 (Counts 1, 4 and 5).

4.1.1.2. Sexual Violence (Counts 1 and 6 to 9)

(i) AFRC/RUF rebels raped an unknown number of women during the February/March 1998 attack on Koidu (Counts 1, 6 and 9);

(ii) AFRC/RUF fighters forcibly took an unknown number of women as "wives" during the February/March 1998 attack on Koidu Town (Counts 1 and 7 to 9);

(iii) AFRC/RUF rebels raped TF1-218 twice in Bumpeh on or about March 1998 (Counts 1, 6 and 9);

(iv) AFRC/RUF rebels forced a couple to have sexual intercourse in front of other captured civilians and their daughter was then forced to wash her father's penis in Bumpeh on or about March 1998 (Counts 1 and 9);

(v) Staff Alhaji raped a woman in Tombodu in April 1998 (Counts 1, 6 and 9);

(vi) AFRC/RUF rebels raped TF1-217's wife right times and also raped an unknown number of other women in Penduma in April 1998 (Counts 1, 6 and 9);

(vii) Rebels raped an unidentified female civilian in Bomboafuidu by inserting a pistol into her vagina on or about April 1998 (Counts 1, 6 and 9);

(viii) AFRC/RUF rebels forced approximately 20 captured civilians to have sexual intercourse with each other in Bomboafuidu on or about April 1998 (Counts 1 and 9);

(ix) AFRC/RUF rebels used knives to slit the genitalia of several captured male and female civilians in Bomboafuidu on or about April 1998 (Counts 1 and 9);

(x) AFRC/RUF rebels raped TF1-195 five times and raped five other women in Sawao between February and April 1998 (Counts 1, 6 and 9); and

(xi) RUF fighters forcibly married an unknown number of women in the civilian camp at Wendedu on or about April 1998 (Counts 1 and 7 to 9).

4.1.1.3. Physical Violence (Counts 1 to 2 and 10 to 11)

(i) AFRC/RUF rebels severely beat TF1-197 near Tombodu in February or March 1998 (Counts 10 and 11);

(ii) AFRC/RUF rebels knocked out several of TF1-015's teeth in Wendedu in March 1998 (Counts 10 and 11);

(iii) Rebels led by Staff Alhaji amputated the hands of three civilians in Tombodu in April 1998 (Counts 1 to 2 and 10 to 11);

(iv) Rebels amputated the hands of at least three men in Penduma in April 1998 (Counts 1 to 2 and 10 to 11);

(v) Rebels amputated TF1-197's arm in Yardu in April 1998 (Counts 1 to 2 and 10 to 11);

(vi) TF1-197 and his brother were flogged by rebels under the command of Staff Alhaji in Tombodu in April 1998 (Count 11);

(vii) AFRC/RUF rebels carved "AFRC" and/or "RUF" on the bodies of 18 civilians in Kayima between February and April 1998 (Counts 1 and 10 to 11);

(viii) AFRC/RUF rebels amputated the hands of five civilian men in Sawao between February and April 1998 (Counts 1 to 2 and 10 to 11); and

(ix) AFRC/RUF rebels beat an unknown number of civilians with sticks and the butts of guns in Sawao between February and April 1998 (Counts 1 and 11).

4.1.1.4. Enslavement (Count 13)

(i) AFRC/RUF rebels used an unknown number of civilians for forced labour between February and April 1998.

4.1.1.5. Pillage (Count 14)

(i) Rebels pillaged the property of TF1-197 near Tombodu on or about February/March 1998;

(ii) AFRC/RUF rebels committed an unknown number of acts of pillage during the February/March 1998 attack on Koidu Town; and

(iii) AFRC and RUF rebels looted funds from Tankoro bank in Koidu Town on or about March 1998 (Count 14).

4.1.1.6. Acts of Terrorism and Collective Punishments (Counts 1 to 2)

2064. In addition to the acts of terrorism and collective punishment enumerated above, we have found that the following acts constituted the crimes of acts of terrorism and collective punishment, as charged in Counts 1 and 2:

(i) AFRC/RUF forces burned civilian homes during the attack on Koidu Town in February/March 1998; and

(ii) AFRC/RUF forces burned civilian homes in Tombodu between February and April 1998.

4.1.2. Crimes Committed from May 1998 to January 2000

2065. The Chamber finds that the following crimes were committed by RUF members in Kono District after the joint criminal enterprise ceased to exist sometime in late April 1998:

4.1.2.1. Unlawful Killings (Counts 1 and 4 to 5)

(i) Rebels killed five civilians near PC Ground in April or May 1998 (Counts 4 to 5);

(ii) RUF Rambo killed 15 civilians with a cutlass in Koidu Buma in May 1998 (Counts 4 to 5);

(iii) An RUF fighter killed Waiyoh, a female Nigerian civilian, on the orders of Rocky in Wendedu in May or June 1998 (Counts 4 to 5); and

(iv) CO Banya killed eight civilians related to Sata Sesay in Wendedu in June 1998 on the orders of Superman (Counts 1 and 4 to 5).

4.1.2.2. Sexual Violence (Counts 1 and 6 to 9)

(i) RUF fighters forcibly married TF1-016 and her daughter in Kissi Town between May and June 1998 (Counts 1 and 7 to 9).[3791]

4.1.2.3. Physical Violence (Counts 1 and 10 to 11)

(i) RUF rebels carved 'RUF' into the backs and arms of several civilian men in Tomandu in May 1998 (Counts 1 and 10 to 11).

4.1.2.4. Enslavement (Count 13)

(i) RUF rebels enslaved hundreds of civilians in camps throughout Kono District between February and December 1998;

(ii) RUF rebels enslaved hundreds of civilians in diamond mines in Tombodu and throughout Kono District from December 1998 until January 2000; and

(iii) RUF rebels enslaved an unknown number of civilians at the military training base at Yengema between December 1998 and January 2000.

[3791] The Chamber has found that this crime continued until approximately July 1999, however the Indictment period for Counts 6 to 9 in Kono District concludes 30 June 1998.

4.2. Responsibility under Article 6(1) of the Statute

4.2.1. Personal Commission

2066. The Prosecution has failed to prove beyond reasonable doubt that Sesay, Kallon or Gbao personally committed any of the crimes in Kono District.

4.2.2. Commission through Joint Criminal Enterprise

4.2.2.1. Existence of a Common Plan

4.2.2.1.1. Continuation of the Common Plan

2067. Following the 14 February 1998 ECOMOG Intervention, the status of the AFRC/ RUF alliance drastically changed. The Junta was no longer in power and was unable to depend on the government or administrative apparatus. The senior leadership of the RUF and AFRC had to reorganise themselves in order to achieve their common purpose that was now focused on regaining power and control over the territory of Sierra Leone. A new plan to achieve that purpose was contemplated by high-ranking AFRC and RUF leaders. It was contemplated that Kono District and Koidu town were to be attacked in order to operate the insurgency from that strategic area. Kono was of strategic importance due to its diamond mines and in order to secure territory that would open a passage to Kailahun, as Bo and Kenema were under the control of ECOMOG and Kamajor forces.[3792]

2068. The participants to the common purpose remained largely the same as during the Junta period with small modifications as not all members of the Supreme Council were able to join the retreating forces. The participants however included, Bockarie, Johnny Paul Koroma, Sesay, Superman, Kallon, Kamara, Kanu, Mike Lamin, Isaac Mongor and other senior officials of the RUF and AFRC such as Gbao, Justice Boutet dissenting.

2069. Despite the new formulation and drastic strategic change, the Chamber finds that the common purpose between leading members of the AFRC and RUF continued to exist. As will be explained in detail below the Chamber finds that it continued to exist until sometime in the end of April 1998. The Chamber finds that the common purpose and the means contemplated within remained the same as they were as there was no fundamental change. The Chamber

[3792] *Supra* para. 790.

therefore finds that it was not a new common purpose that was agreed upon by the participants at this stage but a continuation of the common purpose that was in place during the Junta regime.

2070. More specifically, the Chamber considers that the actions of the AFRC and RUF fighters during Operation Pay Yourself in Bombali District, in which fighters were told to loot civilian property in lieu of pay, was a continuation of the common purpose of the joint criminal enterprise. There was a widespread commission by RUF and AFRC fighters of unlawful killings, rapes, sexual slavery, 'forced marriages,' mutilations, enslavement, pillage and the enlistment, conscription and use of child soldiers to participate actively in hostilities during the attack on Kono and in the subsequent period of joint AFRC/RUF control over Kono District. This demonstrates that the common purpose agreed to by the AFRC and RUF leadership continued to contemplate the commission of crimes within the Statute as a means of increasing its exercise of power and control over the territory of Sierra Leone.

2071. As the AFRC and RUF no longer controlled the revenues and resources of Sierra Leone, they could not afford to pay their fighters. We have found that "Operation Pay Yourself" was announced over the BBC by Johnny Paul Koroma and Bockarie and that consequently RUF and AFRC fighters looted civilian property.[3793] We have found that looting became a systemic feature of RUF and AFRC operations from the announcement of "Operation Pay Yourself" until the end of the Indictment period. This widespread and systematic looting of property allowed the RUF and AFRC to maintain their fighting forces and became a key component of the common plan to regain power and control over the territory of Sierra Leone.

2072. The Chamber therefore finds that despite the change of circumstances following the retreat from Freetown after the ECOMOG intervention, the leading members of the AFRC and RUF maintained the common purpose to take power and control over Sierra Leone. The Chamber further finds that the common purpose of the joint criminal enterprise established at the time of the coup in May 1997 remained in place from 14 February 1998 onwards, and as will be explained below, until sometime in the end of April 1998.

[3793] *Supra* paras. 783-784.

4.2.2.1.2. Rift between the AFRC and RUF in April 1998

2073. The Chamber has also found that following the capture and consolidation of the control of Koidu Town a major rift occurred between the AFRC and RUF forces. It resulted from claims by Bockarie and other senior RUF officials that the RUF should take command over the AFRC, as the RUF was more experienced in guerrilla tactics. The dispute culminated in the humiliation of Johnny Paul Koroma, the most senior official and former Chairman of the Junta Government, and the rape of his wife by Sesay in Buedu. In addition, Gullit, the most senior AFRC after Johnny Paul Koroma, was beaten by Bockarie, arrested and diamonds were seized from him. Furthermore, Kallon executed two AFRC fighters and attempted to prevent the AFRC from holding muster parades, thereby openly challenging the AFRC to operate as an independent organisation.[3794] Following this rift, Gullit announced his plan that the AFRC troops would withdraw from Kono District to join SAJ Musa in Koinadugu District.[3795] These events led to the departure of the majority of AFRC fighters from Kono District. Thereafter the AFRC contemplated their own plan to "re-instate the army",[3796] which plan did not involve the RUF. Following departure of AFRC Forces, Gullit refused to accept orders from the RUF and ignored a directive from Superman to return to Kono District.[3797]

2074. Following the last joined operation between the RUF and AFRC attacking ECOMOG at Sewafe Bridge, which took place sometime in late April, the Chamber finds that the common plan between the AFRC and RUF ceased to exist. Each group thereafter had its own individual plan.

2075. The Chamber finds that after this breakaway, and for the remainder of the timeframes pleaded in relation to Kono District in the Indictment, the AFRC and RUF remained in sporadic contact and cooperated occasionally. However, we find that there is insufficient evidence to demonstrate that the senior members of the two groups, including Bockarie, Sesay, Superman, Kallon, Gbao, Gullit, Bazzy and Five-Five acted jointly after the breakaway of most AFRC senior Commanders and troops sometime in late April 1998.

[3794] Exhibit 119, AFRC Transcript of 19 May 2005, TF1-334, pp. 8-10.
[3795] Exhibit 119, Transcript of 19 May 2005, TF1-334, pp. 14-15; Exhibit 119, Transcript of 17 June 2005, TF1-334, pp. 44-45; Exhibit 119, AFRC Transcript of 20 May 2005, TF1-334, p. 86. *See also*: Transcript of 15 April 2008, Morris Kallon, p. 10.
[3796] Defence Request for Agreement of Facts, 8 March 2007, para 96.

2076. The Chamber therefore finds that the common purpose between senior members of the AFRC and RUF that continued to exist after the ECOMOG Intervention in February 1998, ceased to exist in late April 1998. The Chamber, therefore, holds that at that time no responsibility can be imputed to Sesay, Kallon or Gbao for criminal acts committed by any AFRC fighter under the mode of a joint criminal enterprise. The Chamber recalls its previous finding that the Prosecution only pleaded a joint criminal enterprise between senior members of the AFRC and RUF, but not a joint criminal enterprise between leading members of the RUF ortanisation.

4.2.2.2. Plurality of Persons

2077. The Chamber finds that the following members participated in the joint criminal enterprise following the retreat from February 1998 until the common purpose ceased to exist in April 1998: Superman, Isaac Mongor, Mike Lamin, Johnny Paul Koroma, Gullit, Bazzy and Five-Five, and initially SAJ Musa. At this time, Bockarie was in Kenema District,[3798] Kallon was in Bo District[3799] and Gbao was in Kailahun.[3800] Sesay was in Makeni, but met his family and a group of senior RUF and AFRC fighters, including Johnny Paul Koroma, SAJ Musa, FSY Koroma, SO Williams, Superman, Mike Lamin, Peter Vandi and Isaac Mongor at RDF Junction in Port Loko District.[3801]

2078. Shortly after announcing "Operation Pay Yourself," Bockarie fled Kenema Town for Buedu, the RUF headquarters in Kailahun District. Most of the RUF and AFRC forces stationed in Bo and Kenema District retreated to Kailahun District.

2079. The Chamber is satisfied that SAJ Musa did not wish to work with and be subordinated to the RUF, whom he did not respect because they were not professional soldiers.[3802] He left the forces before they proceeded on the Kono attack. SAJ Musa did not communicate with the

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[3797] Transcript of 25 July 2005, TF1-360, p. 4 (CS); Exhibit 119, AFRC Transcript of 23 May 2005, TF1-334, pp. 41-42.
[3798] Transcript 21 November 2005, TF1-045, pp. 8, 9; Transcript of 9 May 2007, Issa Sesay, pp. 13-15.
[3799] Transcript of 11 April 2008, Morris Kallon, p. 128; Transcript of 30 May 2007, Issa Sesay, pp. 28-29.
[3800] TF1-045 and DIS-157 place Gbao in Kailahun Town during the ECOMOG Intervention; See Transcript of 25 November 2005, TF1-045, p. 35, Transcript of 25 January 2008, DIS-157, p. 94.
[3801] Transcript of 8 May 2007, Issa Sesay, p. 90; Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, pp.70-71.
[3802] Transcript of 14 October 2004, George Johnson, pp. 58-59; Transcript of 5 December 2005, TF1-184, pp. 88-89.

joint AFRC/RUF forces and did not cooperate with them in any way.[3803] The Chamber, therefore, finds that SAJ Musa withdrew as a participant from the criminal enterprise in February 1998. The Chamber, therefore, holds that no responsibility can be imputed to Sesay, Kallon or Gbao as a result of criminal acts committed by SAJ Musa or fighters under his control after his departure for Koinadugu District in February 1998.

2080. The Chamber is not satisfied that between 14 February 1998 and beginning of May 1998, CO Rocky, Rambo RUF, AFRC Commander Savage and his deputy, Staff Sergeant Alhaji were members of the joint criminal enterprise. The Chamber however finds that they were directly subordinate to and used by members of the joint criminal enterprise to commit crimes that were either intended by the members to further the common design, or which were a reasonably foreseeable consequence of the common purpose.

2081. Based on the foregoing, the Chamber finds that Bockarie, Sesay, Superman, Kallon, Gbao, Mike Lamin, Isaac Mongor and other senior RUF leaders worked in concert with senior AFRC members including Gullit, Bazzy, Five-Five, Johnny Paul Koroma and Eddie Kanneh up until some point in April 1998 when Gullit and other senior AFRC Commanders departed for Koinadugu District with the majority of AFRC fighters. (Justice Boutet dissenting as to Gbao's participation in)

4.2.2.3. Participation in the Common Plan

4.2.2.3.1. Sesay

2082. The Chamber has found that Sesay participated in meetings while in Makeni to plan the Koidu operation. The Chamber has found from the evidence that looting in Makeni and during the journey from Makeni to Koidu Town was systematic and widespread. The Chamber is satisfied that Sesay approved those crimes. We infer from the evidence that Sesay, as one of the highest ranking RUF officers in Makeni at that time, did not take any action to prevent the looting, thereby tacitly approving and encouraging the commission of these crimes.[3804] The Chamber finds that Sesay's presence during Operation Pay Yourself in Makeni and his tacit

[3803] Transcript of 18 October 2004, George Johnson, p. 104; Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 108; Transcript of 20 July 2005, TF1-360, p. 11 (CS); Transcript of 7 November 2005, TF1-366, p. 105 (CS); SAJ Musa refused to obey orders from Sesay or Bockarie: Transcript of 5 December 2005, TF1-184, pp. 88-89; Transcript of 17 January 2008, DIS-214, pp. 103 (CS); Transcript of 14 April 2008, Morris Kallon, p. 129.

endorsement of the looting contributed to the overall objective of the common purpose, given his power, authority, rank, position and status as BFC within the RUF and his important membership in the AFRC Supreme Council.

2083. The Chamber found that Sesay was present and moved with the troops during the attack on Koidu Town. Even though he was not actively engaged in this operation, he was still recovering from the injury he had sustained during the attack on Bo Town, the Operation Commander Superman was subordinate to Sesay during the attack.[3805] Furthermore, the Chamber finds that Sesay was actively involved in the overall planning of this operation. Sesay's participation is also demonstrated by his outrage over two retreating fighters and their execution by him, thereby setting an example and pressing the troops to achieve their goal of capturing Koidu, which was essential to the overall objective of the joint criminal enterprise.

2084. After the successful attack on Koidu Town, Sesay organised an integrated AFRC/RUF command structure in Koidu Town. Sesay appointed Superman overall Commander in Kono District and Kallon served as his deputy. At a meeting with Johnny Paul Koroma organised by Sesay prior to his departure from Koidu Town, Koroma instructed the combined AFRC/RUF fighters that they should kill civilians in Koidu Town and burn civilian houses.[3806] Sesay endorsed these instructions and in his own directions to the fighters, told them that Koidu Town should be made a civilian-free area, meaning that civilians should be killed, and that civilian houses should be burned because the civilians were traitors.[3807] These orders were carried out.

2085. After Sesay's departure from Koidu Town, he was based primarily in Buedu, Kailahun District, which also served as the RUF headquarters where Bockarie was also operating. We conclude that Sesay's continuing assignment as BFC and his close relationship and proximity to Bockarie gave Sesay a great deal of authority during this period. Sesay received regular radio reports from Kono District, including reports of crimes committed by RUF and AFRC fighters.

[3804] Transcript of 9 May 2007, Issa Sesay, p. 39. Prosecution Final Trial Brief, para. 496.
[3805] Transcript of 20 July 2005, TF1-360, p. 14 (CS); Transcript of 3 June 2008, DAG-048, p. 101; Exhibit 119, AFRC Transcript of 17 May 2005, TF1-334, p. 115.
[3806] Exhibit 119, AFRC Transcript of 18 May 2005, TF1-334, pp. 3-9.
[3807] Exhibit 119, AFRC Transcript of 18 May 2005, TF1-334, pp. 3-9.

Sesay also had knowledge of joint AFRC/RUF activities in the District through his bodyguards who were present in the area.

2086. Sesay was also involved in mining activities in Kono District. The RUF mining Commanders reported directly to Sesay. He visited the mines to collect diamonds, signed-off on the mining log-books and transported diamonds to Bockarie and also took them to Liberia.[3808] The Chamber has held that Sesay, Bockarie and other senior RUF and AFRC members had bodyguards who worked as mining Commanders, supervising mining by enslaved civilians. Sesay's bodyguards were also specifically tasked to bring him intelligence reports from the field. The Chamber finds, therefore, that Sesay participated in the forced labour in diamond mines in Kono District between 14 February and May 1998 in order to further the common purpose.

2087. From his base in Kailahun District, Sesay ordered that all civilians be trained and that the SBUs be armed with small firearms.[3809] As a result many civilians from 10 to 25 years of age were trained in Buedu at that time over a two-week-period. [3810] Sesay himself had SBUs under his direct control, some of which were used on the frontlines.[3811]

2088. Bockarie and Sesay ordered the training base to be established at Yengema. Sesay was personally involved in the planning and the creation of the base. The Yengema training base operated until the end of the disarmament process in Sierra Leone.[3812] The training Commander, reported to Bockarie through Sesay,[3813] until Bockarie left the RUF in December 1999; thereafter the training Commander reported to Sesay only.[3814] The training of new recruits was essential to the common purpose of the RUF and AFRC as it ensured the maintenance of the military manpower and the success of operations.

2089. Considering the assignment and position as a senior Commander in the RUF forces and his close personal relationship to the "*de facto*" Leader Bockarie, the Chamber finds that

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[3808] Where, incidentally, Sesay lost a package of diamonds, precipitating his demotion to BFI in May 1998.
[3809] Transcript of 2 November 2005, TF1-314, pp. 33-36.
[3810] Transcript of 2 November 2005, TF1-314, pp. 27-28.
[3811] Transcript of 21 November 2005, TF1-045, p. 39; Transcript of 21 July 2006, TF1-371, pp. 63-64 (CS); Transcript of 28 July 2005, TF1-036, p. 17 (CS); Transcript of 2 March 2006, TF1-113, p. 65.
[3812] TF1-362, Transcript 22 April 2005, Closed Session, pp. 13-14.
[3813] Transcript of 22 April 2005, TF1-362, p. 16 (CS).
[3814] Transcript of 22 April 2005, TF1-362, p. 17 (CS).

Sesay significantly contributed to the joint criminal enterprise and that he understood the overall context in which his actions took place. The Chamber is satisfied that Sesay knew that his participation formed part of the widespread and systematic attack against the civilian population between 14 February 1998 and 30 June 1998. We are also satisfied that Sesay knew or had reason to know that the victims of the crimes committed in Kono District were not taking a direct part in the hostilities at the time of the commission of the criminal acts.

2090. It is the Chamber's finding that the acts found above to have been committed by Sesay amount to a significant contribution to the furtherance of the common purpose by securing revenues, territory and manpower for the Junta Government, and by aiming to reduce or eliminate civilian opposition to the Junta rule.

2091. The Chamber therefore concludes that Sesay intended to take power and control over the territory of Sierra Leone, in particular the diamond mining areas, and actively participated in the furtherance of the common purpose. By his participation he significantly contributed to the commission of crimes of acts of terrorism (Count 1), collective punishment (Count 2), unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9), physical violence (Count 11), enslavement (Count 13) and pillage (Count 14) as enumerated above. These crimes were committed in Kono District between 14 February 1998 and April/May 1998.

2092. The Chamber finds that Sesay shared with the other participants in the joint criminal enterprise the requisite intent to commit these crimes. In particular, the Chamber finds that the fact that Sesay endorsed Koroma's instructions to the AFRC/RUF fighters to burn houses and kill civilians in Koidu Town in March 1998 indicates that he shared the same intent as Koroma to commit these crimes in pursuance of the common purpose of the joint criminal enterprise. Further, the fact that Sesay and Bockarie jointly ordered the establishment of the Yengema training base indicates that he shared the same intent as Bockarie to force civilians to engage in military training, in pursuance of the common purpose of the joint criminal enterprise.

4.2.2.3.2. Kallon

2093. Kallon was a senior Commander, Vanguard and former AFRC Supreme Council member. In his high ranking position he was involved in the planning and execution of the attack against Koidu Town. As discussed, Kallon had an active combat role during the attack.

Kallon was also present at the meeting where Johnny Paul Koroma and Sesay gave instructions to the fighters for civilians in Kono to be killed and their homes burned because they were traitors. The Chamber recalls that at that meeting, the creation of an integrated AFRC/RUF command structure for Kono was announced and Kallon was appointed deputy to Superman. Kallon was present in Koidu Town when the AFRC/RUF fighters unlawfully killed civilians and burned their houses in accordance with the instructions given by Sesay and Johnny Paul Koroma. The Chamber finds that Kallon's subsequent conduct in Kono District demonstrates that he agreed to the order issued by Sesay and Johnny Paul Koroma and endorsed their actions. This is demonstrated in particular by the crimes committed and further discussed in paragraphs 2094 to 2101.

2094. The Chamber has found that between April and August 1998, Kallon was able to give orders to troops that were obeyed and he commanded troops within his area of responsibility of laying ambushes.[3815] Kallon was responsible for mounting ambushes against ECOMOG troops along the Makeni-Kono Highway.[3816] The Chamber has found in the joint AFRC/RUF hierarchy in Kono District, that Kallon was an important and influential Commander who enjoyed considerable respect, power, authority and prestige.

2095. The Chamber has found that children under the age of 15 years were widely used in the attack on Koidu Town and during the period of AFRC/RUF joint control over the district.[3817] The Chamber has also found that Kallon had bodyguards who were under the age of 15 years and that he knew the SBUs were used to force the enslaved mining and guard the mining sites. During 1998 and 1999, Kallon brought persons under 15 years of age to be trained by the RUF at Bunumbu.[3818] The Chamber finds that Kallon was therefore engaged in the creation and maintenance of a system of enslavement that was created by the RUF in order to maintain and strengthen their fighting force. The Chamber finds that through these acts Kallon participated and significantly contributed to the common purpose.

[3815] *Supra* para. 835.
[3816] Transcript of 20 October 2004, George Johnson, p. 6.
[3817] *Supra* para. 1673.
[3818] *Supra* paras 1699-1700.

2096. The Chamber further finds that Kallon was actively engaged in the abduction for and planning of training of SBUs in Kono District in February /March 1998.[3819]

2097. The Chamber has also found that Kallon, like Sesay and Bockarie, had bodyguards who supervised on his behalf "private" mining by enslaved civilians. Kallon also visited mining sites in Kono District during this period. Likewise, we have found that Kallon received regular communications about the activities of the joint forces in Kono.

2098. We have found that Kallon organised camps for civilians and was a senior Commander authorised to issue passes to civilians. Civilians were forced to move to these camps by rebels and that he was the only person with the authority to issue a pass.[3820]

2099. The Chamber has also held that civilian women were raped by RUF fighters during food-finding missions ordered by Kallon. The Chamber further finds that Kallon endorsed and encouraged this criminal activity that was intended to further the goals of the common purpose. For instance, Kallon participated in a mock vote initiated by CO Rocky over the life of TF1-015. Kallon voted to kill the Witness, but the majority of the fighters, including subordinates of Kallon held that the witness should not be killed.

2100. The Chamber is satisfied that Kallon knew that his participation form part of the widespread and systematic attack against the civilian population between 14 February 1998 and 30 June 1998. We are also satisfied that Kallon knew or had reason to know that the victims of the crimes committed in Kono District were not taking a direct part in the hostilities at the time of the commission of these acts.

2101. It is the Chamber's finding that the acts found above by Kallon amount to a significant contribution to the furtherance of the common purpose by securing revenues, territory and manpower for the Junta Government, and by aiming to reduce or eliminate civilian opposition to Junta rule.

2102. The Chamber therefore concludes that Kallon intended to take power and control over the territory of Sierra Leone, in particular the diamond mining areas, and actively participated

[3819] Transcript of 11 April 2005, TF1-141, p. 89. *See supra* paras 1695-1701.
[3820] *Supra* para. 1228.

in the furtherance of the common purpose. By his participation he significantly contributed to the commission of crimes of acts of terrorism (Count 1), collective punishment (Count 2), unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9), physical violence (Count 11), enslavement (Count 13) and pillage (Count 14) as enumerated above. These crimes were committed in Kono District between 14 February 1998 and April/May 1998.

2103. The Chamber finds that Kallon shared with the other participants in the joint criminal enterprise the requisite intent to commit these crimes. In particular, the Chamber finds that the fact that Kallon agreed to and endorsed Koroma's instructions to the AFRC/RUF fighters to burn houses and kill civilians in Koidu Town in March 1998, which was also endorsed by Sesay, indicates that he shared the same intent as Koroma and Sesay to commit these crimes in pursuance of the common purpose of the joint criminal enterprise.

4.2.2.3.3. Gbao

2104. The Chamber finds by a majority, Justice Boutet dissenting, that Gbao made a significant contribution to the furtherance of the joint criminal enterprise between 14 February 1998 and April/May 1998 and is responsible for the crimes committed within the joint criminal enterprise in Kono District.

2105. It is the Chamber's finding, Justice Boutet dissenting, that the acts by Gbao amount to a significant contribution to the furtherance of the common purpose. We find that the above findings in respect of Bo and Kenema District of his participation and significant contribution apply *mutatis mutandis* to the crimes committed in Kono District as the Chamber has found that the joint criminal enterprise continued to exist in relation to the time frame pleaded in Kono District.

2106. In addition, the Chamber is satisfied that Gbao either knew or had reason to know that the deliberate, widespread sexual violence against civilians occurred during RUF military assaults. Similarly, he knew or had reason to know that sexual violence would have been inflicted upon these individuals.

2107. Given his important role and oversight functions, we infer that Gbao knew that non-consensual sexual relationships in the context of 'forced marriage' were likely to be committed by the RUF fighters. Based on the totality of the evidence, the Chamber also infers that Gbao

knew or had reason to know that the victims of 'forced marriage' did not genuinely consent to the sexual relationship. Given our findings above in relation to the importance of 'forced marriage' to the RUF as both a tactic of war and means of obtaining unpaid logistical support for troops, we find that Gbao knew or had reason to know that sexual violence was intended by members of the joint criminal enterprise in order to further the goals of the joint criminal enterprise.

2108. We also find that he knew or ought to had reason to know that civilians were enslaved in order to pursue the common purpose. Despite knowing that sexual violence was being committed by RUF fighters on a large scale in Kono District, Gbao continued to pursue the common purpose of the joint criminal enterprise.

2109. The Chamber, Justice Boutet dissenting, is therefore satisfied that the Prosecution has proven beyond reasonable doubt that Gbao willingly took the risk that the crimes charged and proved under Counts 3 to 5, 6 to 9, 10 and 11, 13 and 14 which he did not intend as a means of achieving the common purpose, might be committed by other members of the joint criminal enterprise or persons under their control.

2110. The majority of the Chamber, Justice Boutet dissenting, therefore, finds that Gbao is criminally responsible for the crimes enumerated above in relation to Bo District and proved under Counts 3 to 5, 6 to 9, 10 and 11, 13 and 14 to have occurred between 14 February 1998 and April 1998 as a member of the joint criminal enterprise.

4.2.3. Ordering, Planning, Instigating or Aiding and Abetting

4.2.3.1. Sesay

2111. The Chamber recalls its Factual Findings on forced mining in Kono District. Following the recapture of Kono by RUF troops subordinate to Sesay in December 1998, the practice of forced mining became widespread and continued until after January 2000.

2112. The Chamber has found that the mining system in Kono District was hierarchically organised, ranging from rebels at the mining sites who worked in "gangs" under gang leaders, to site Commanders such as Officer Med in Tombodu, to the overall Mining Commander who reported to Sesay. The Chamber recalls that evidence was adduced of numerous sites in Kono District where mining was conducted. The Chamber is satisfied that a significant number of

RUF rebels were engaged in various roles contributing to the forced mining process, transporting and guarding civilians at the mining sites in order to ensure the forced labour, sorting of the diamonds, completing of the associated paperwork and remitting the diamonds to Commanders including Sesay.

2113. We have found that in December 1998, Bockarie appointed MS Kennedy as the Overall Mining Commander in Kono District. In 2000, it was Sesay who appointed Kennedy's replacement. The Overall Mining Commander reported to Sesay. Throughout 1999 and 2000, Sesay visited Kono District and collected diamonds.[3821] Sesay maintained a house in Koidu Town where he received mining Commanders for this purpose. He also visited the mines and ordered that civilians be captured from other Districts. He arranged for transportation of the captured civilians to the mines.

2114. The Chamber finds that the nature and magnitude of the forced mining in Kono District required extensive planning on an ongoing basis. We find that this is proved by the detailed administrative and archiving records maintained to compute the size, grade, origin and value of the diamonds found. As the illicit sale of diamonds was the RUF's primary means of financing its operations, the mining system in Kono District was designed and supervised at the highest levels. Sesay, as the BFC and subordinate to Bockarie at that time, was actively and intimately involved in the forced mining operations and its processes in Kono District.

2115. We find that Sesay's conduct was a significant contributory factor to the perpetration of enslavement and that he intended the commission of these crimes. The Chamber is therefore satisfied that Sesay, acting in concert with other senior members of the RUF, designed the abduction and enslavement of hundreds of civilians for diamond mining throughout Kono District.

2116. For the foregoing reasons, the Chamber finds Sesay liable under Article 6(1) of the Statute for planning the enslavement of hundreds of civilians to work in mines at Tombodu and throughout Kono District between December 1998 and January 2000, as charged in Count 13 of the Indictment.

[3821] TF1-071 saw Mining Commanders Kennedy and Peleto give diamonds to Sesay in a white envelope at the RUF mining head office in Kwakoyima, Koidu Town, on several occasions between 1998 and 2000. He testified that this was the usual practice: Transcript of 21 January 2005, pp. 109-114.

4.2.3.2. Kallon

2117. The Chamber recalls that Waiyoh, a female Nigerian civilian, was killed on the orders of RUF Commander Rocky in May 1998.

2118. We have found that Kallon who knew that Waiyoh was a Nigerian woman was concerned that she could escape from the civilian camp where she lived and disclose information about the RUF to the ECOMOG forces. Kallon's position required him to monitor and report on the RUF's military operations and there is evidence that Kallon was involved in the oversight of the civilian camps in Koidu. We recall that on one occasion Rocky sent a civilian from the Kaidu camp to Kallon to receive a travel pass as Rocky was unable to authorise his movement.[3822] Although Rocky and Kallon were both RUF Commanders of equal status as Vanguards, we find that Kallon's assignment permitted him to exercise a supervisory role over Rocky's management of the camp at Wendedu.

2119. We recall that Kallon repeatedly questioned Rocky about Waiyoh in terms that made it clear to Rocky that Kallon considered Waiyoh to be an "enemy" of the RUF. We consider that by this conduct Kallon implied that Waiyoh was a threat to be contained or removed. Kallon's subsequent conduct in sending his bodyguards to the camp to further question Rocky about Waiyoh reinforced this message. We note that it was shortly after this visit that Rocky ordered that Waiyoh be killed.

2120. We find that Kallon's conduct prompted Rocky to order her killing, creating a nexus between this conduct and the crime. We are further satisfied that Kallon either intended to instigate the commission of the crime through his repeated inquiries, or at least that he was aware or had reason to know that Rocky would kill Waiyoh to resolve his concerns. The Chamber therefore finds Kallon liable under Article 6(1) of the Statute for instigating the killing of Waiyoh in May 1998 in Wendedu, as charged in Counts 4 and 5 of the Indictment.

4.2.3.3. Gbao

2121. The Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Gbao ordered, instigated, planned or otherwise aided and abetted the crimes committed

[3822] *Supra* paras 1228, 1231.

by RUF fighters in Kono District after the dissolution of the AFRC/RUF joint criminal enterprise at the end of April 1998.

4.3. Superior Responsibility of Sesay

2122. Having found Sesay liable under Article 6(1) of the Statute for the crimes committed in Kono District between February 1998 and April 1998 and the forced mining in Kono District between December 1998 and about 30 January 2000, the Chamber will proceed to determine his liability under Article 6(3) of the Statute for the remaining crimes we found to have been committed within the Indictment period.

4.3.1. Existence of a Superior-Subordinate relationship

4.3.1.1. May 1998 to November 1998

2123. The Chamber recalls its findings on the command role of Sesay for the period May 1998 to November 1998. From early March 1998 to end of April 1998, Sesay was based in Buedu in Kailahun District as BFC and worked closely with Bockarie.[3823] We have found Sesay liable for crimes committed in Kono District in this period through his participation in the AFRC/RUF joint criminal enterprise.

2124. We recall that in May 1998, Sesay was assigned as BFI to Pendembu. Although Sesay was an active Commander in Pendembu, DIS-174 testified that Sesay's control was limited to Kailahun District at that time.[3824] There is also evidence that while Superman was overall Commander for Kono District from March until August 1998, he refused to take orders from Sesay.[3825] The Prosecution did not adduce sufficient evidence about the RUF's operations in Kono District between August and November 1998 to allow a proper determination of Sesay's involvement in Kono District at that time. Furthermore, no evidence was adduced to establish that Sesay communicated with or was able to give orders to RUF fighters in Kono District during this period. There is evidence of the failed Fiti-Fata mission during that time, but there

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[3823] *Supra* para. 826.
[3824] Transcript of 8 November 2005, TF1- 366, p. 81; Transcript of 21 January 2008, DIS-174, pp. 102-104, 105 (CS).
[3825] Transcript of 21 January 2005, TF1-071, pp.24-25 (CS); Transcript of 8 November 2005, TF1- 366, p. 81; Transcript of 21 January 2008, DIS-174, pp. 102-104, 105 (CS).

is no evidence to establish any command or superior-subordinate relationship by Sesay for that period.

2125. The Chamber accordingly finds that it has not established beyond reasonable doubt that Sesay was in a superior-subordinate relationship with RUF fighters in Kono District during the period from May to the end of November 1998.

4.3.1.2. December 1998 to January 2000

2126. The Chamber recalls its findings on the command role of Sesay as a RUF superior Commander from December 1998 to September 2000. In the first or second week of December 1998, Bockarie recalled Sesay to Buedu and reinstated him as BFC. Sesay was therefore only subordinate to the Commander-in-Chief Bockarie and the Leader Sankoh in the RUF command structure. Sesay led and commanded the successful RUF attack to re-capture Koidu in December 1998. He also proceeded to capture Makeni and Masiaka and was subsequently based at the Teku Barracks in Makeni until March 1999 and again from October 1999 until February 2000, at which time he temporarily moved to Koidu. He returned to Makeni on 2 May 2000. Sesay's command capability and responsibility only increased in early 2000 when Sankoh appointed him as his deputy after Bockarie left the RUF for Liberia at that end of December 1999.[3826]

2127. The Chamber recalls the evidence that Sesay regularly gave orders to RUF troops, received reports from them and regularly communicated with Bockarie and Sankoh. There is also evidence that Sesay deployed forces, disciplined fighters, monitored the movement of NGOs in RUF-controlled territory and communicated with civil society groups on behalf of the RUF.[3827] The Chamber finds that such evidence proves Sesay's seniority and ability to effectively control RUF fighters under his command during that period of time.

2128. The Chamber is satisfied that Sesay regularly visited Kono District between December 1998 and January 2000. Sesay had a house in an area of Koidu known as "Lebanon."[3828] Sesay was deeply involved in mining operations in Kono District between December 1998 and

[3826] *Supra* para. 913. The Prosecution has not established where Sesay was primarily based in the period from March to October 1999.
[3827] *Supra* para. 922.
[3828] Transcript of 21 January 2006, TF1-071, pp. 114-115; Transcript of 22 June 2006, TF1-367, p. 43.

January 2000.[3829] TF1-367 interacted with Sesay regularly and testified that Sesay was always accompanied by a coterie of bodyguards.[3830] Sesay visited Yengema on several occasions and the training Commander there reported to him.[3831] In July 1999 Sesay reported to Bockarie that he was taking certain RUF members and materials to the Kono axis to reinforce it.[3832] Prominent civilians in Kono District knew Sesay as the man in charge of the RUF.[3833]

2129. The Chamber notes that throughout the period ranging from March to October 1999, Superman and RUF fighters loyal to him remained largely around Makeni in Bombali District and the Port Loko area. AFRC fighters also remained in these Districts. Although there is evidence of Superman being in sporadic contact with Bockarie and Sankoh throughout this period, the Chamber finds that Sesay's effective command did not extend to those fighters in Bombali and Port Loko Districts.[3834] Rather, the Chamber is of the view that between March and October 1999 Sesay and Superman each enjoyed control over different groups of RUF fighters and we are satisfied that the rift between them did not undermine Sesay's ability to effectively control the RUF fighters in Kono District.

2130. Predicated upon the foregoing, the Chamber finds that Sesay was in a superior-subordinate relationship with RUF fighters in Kono District between December 1998 and the end of September 2000. We therefore find that he exercised effective control over the RUF rebels who enslaved an unknown number of civilians at Yengema training base throughout this period.

4.3.2. Actual or Imputed Knowledge

2131. The Chamber is satisfied that Sesay had actual knowledge of the enslavement of civilians at Yengema due to his visits to the base and the fact that he received reports pertaining

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[3829] *Supra* para. 1245.
[3830] Transcript of 21 June 2006, TF1-367, pp. 56-57.
[3831] Transcript of 22 May 2007, Issa Sesay, p. 31. *See supra* para. 1647.
[3832] Exhibit 32, RUF Radio Log Book, p. 8683, 8685. *See* Exhibit 33, RUF Radio Log Book, p. 8768 for evidence of Sesay's presence in Kono District on another occasion. The Chamber notes Sesay's testimony that he visited Kono on two or three occasions between March and October 1999 (Transcript of 22 May 2007, Issa Sesay, p. 78), but finds that on the totality of the evidence the only reasonable inference is that Sesay in fact was regularly present in Kono District.
[3833] Transcript of 25 October 2004, TF1-078, p. 100.
[3834] Sesay testified that between March and October 1999, fighters in Makeni were not under his or Bockarie's control: 22 May 2007, p. 58 and pp. 61-62 for evidence of contact between Bockarie and Sankoh and Superman.

to its operation. The Chamber therefore finds that Sesay knew that an unknown number of civilians were enslaved there between December 1998 and January 2000.

4.3.3. Failure to Prevent or Punish

2132. The Chamber finds that there is no evidence that Sesay attempted to prevent or punish the perpetrators of the enslavement of civilians at the military training base at Yengema. Rather, we observe that Sesay actively monitored the prolongation of this crime in his capacity as BFC.

2133. The Chamber therefore finds Sesay liable pursuant to Article 6(3) of the Statute for the enslavement of an unknown number of civilians at Yengema training base between December 1998 and about 30 January 2000.

4.4. Superior Responsibility of Kallon

2134. Having found Kallon liable under Article 6(1) of the Statute for the crimes committed in Kono District between February 1998 and April 1998 and the killing of Waiyoh in May or June 1998, the Chamber will proceed to determine his liability under Article 6(3) of the Statute for the remaining crimes committed within the Indictment period in Kono District.

4.4.1. Existence of a Superior-Subordinate relationship

4.4.1.1. April 1998 to November 1998

2135. The Chamber recalls its findings on the command role of Kallon within the RUF organisation from February 1998 to November 1998. The Chamber has found that between April and August 1998, Kallon was able to give orders to troops that were obeyed and he commanded troops within his area of responsibility of laying ambushes.[3835] In addition, Kallon interacted with the Battalion Commanders in Kono District as an intermediary between them and Superman.[3836] Kallon was a Vanguard and we recall the further indicia of authority that he had personal bodyguards, access to a radio set and subordinates who forced civilians to mine for him personally.[3837]

[3835] *Supra* para. 835.
[3836] Transcript of 22 July 2005, TF1-360, p. 28.
[3837] *Supra* paras 833-839.

2136. The Chamber recalls that Superman called muster parades in Kono District but as a senior officer Kallon had the right to address the parades.[3838] This evidence indicates that Kallon enjoyed a high public profile among the troops. Kallon was known to be a strict disciplinarian[3839] and he was feared by RUF troops in Kono District. Kallon killed both AFRC and RUF fighters whom he deemed to be acting contrary to orders.[3840]

2137. The Chamber further finds that although the Commanders of the civilian camps in Kono District were directly subordinate to Superman, Kallon had a supervisory role over the camps.[3841] We recall that Kallon visited Kaidu and Wendedu several times and he was superior to the Commander of the civilians, RUF Rocky. Civilians were required to see Kallon in order to obtain permission to travel outside the Kaidu area, as Rocky did not have the authority to issue travel passes. Further, it was Kallon who gave orders to move the civilians when the camps became too close to the front lines.[3842] Kallon also on one occasion assigned Rocky as the leader of a mission to Bumpeh.[3843] The Chamber accordingly finds it established beyond reasonable doubt that Kallon was able to exercise effective control over Rocky as the Commander of the civilian camps.

2138. The Chamber finds that by virtue of the complex culture of status, assignment and rank within the RUF there were senior RUF Commanders in Kono District over whom Kallon did not have effective control, such as Superman, Isaac Mongor[3844] and RUF Rambo.[3845]

2139. We further find that the killings of Sata Sesay's family were committed on the specific orders of Superman, over whom Kallon did not have effective control. The Chamber recalls that the relationship between Kallon and Superman in Kono District was difficult and certain RUF fighters were very loyal to Superman. It is not clear whether (Col.) KS Banya departed

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[3838] Transcript of 22 April 2008, DMK-161, pp. 59-60.
[3839] Transcript of 22 April 2008, DMK-161, p. 60.
[3840] Exhibit 119, AFRC Transcript of 19 May 2005, TF10334, pp. 8-10; Transcript of 20 July 2005, TF1-360, p. 22. The Chamber does not accept the explanation of Kallon in respect of the killing of the AFRC fighter who refused to attend military formations: *see* Transcript of 14 April 2008, Morris Kallon, p. 24.
[3841] TF1-361, Transcript 18 July 2005, TF1-361, pp. 101-106.Transcript of 26 July 2005, TF1-360, p. 46.
[3842] *Supra* paras 1225-1231.
[3843] Transcript of 26 July 2005, TF1-360, p. 76.
[3844] Transcript of 26 July 2005, TF1-360, pp. 39-40.
[3845] TF1-360 testified that Kallon was superior to RUF Rambo, Transcript of 26 July 2005, TF1-360, pp. 39-40. The Chamber, however, has found that this witness requires corroboration when his evidence refers to the acts and conduct of the Accused,.

Kono District with Superman in August 1998. In the absence of evidence that Kallon was in fact able to give orders to Col. Banya, who was himself an RUF Commander, the Chamber finds that there is reasonable doubt as to whether Kallon had effective control over or was in a superior-subordinate relationship with (Col.) KS Banya. The Chamber accordingly does not find Kallon liable under Article 6(3) for this killing.

2140. In relation to the killings at PC Ground, we have found that the affiliation of the perpetrators of this crime has not been established.[3846] The witness was an abducted civilian in the custody of STF fighters and the time frame of the killing was between April and May 1998. There is accordingly a reasonable doubt as to whether Kallon had effective control over the perpetrators, who may have been STF, RUF or AFRC fighters and the Chamber opines that Kallon did not have effective control over this group of fighters.

2141. The Chamber recalls that the Prosecution has failed to establish Kallon's position and command role after the failed Fiti-Fata Mission in August 1998.[3847] Subject to the findings in the preceding paragraphs (2135-2140), the Chamber accordingly finds that Kallon was in a superior-subordinate relationship with RUF fighters in Kono District until August 1998 only.

4.4.1.2. December 1998 to January 2000

2142. The Chamber recalls its findings on Kallon's command role between December 1998 and January 2000.[3848] Kallon was Sesay's second in command throughout this period and the standard operating procedure until Bockarie's departure in December 1999, was for Bockarie to send orders to Sesay who would pass them on to Kallon.[3849] In December 1999, Kallon replaced Superman as BGC.[3850]

2143. It is unclear whether Kallon's position as BFI remained active throughout 1999, as the RUF were not engaged in large scale combat operations for much of this period. From March to October 1999, Kallon was the RUF Commander in Magburaka in Tonkolili District.[3851]

[3846] *Supra* paras 1281-1282.
[3847] *Supra* para. 839.
[3848] *Supra* para. 839.
[3849] Transcript of 18 April 2008, Morris Kallon, p. 10.
[3850] Transcript of 21 January 2005, TF1-071, pp. 24-25.
[3851] Transcript of 1 June 2007, Issa Sesay, p. 50; Transcript of 15 April 2008, Morris Kallon, p. 26; Transcript of 1 May 2008, DMK-095, p. 32.

2144. On various occasions in 1999 Sankoh also gave instructions directly to Kallon via radio and Kallon reported to Sankoh.[3852] It is indicative of Kallon's seniority that he was so close to Sankoh.[3853] Kallon's messages to Sankoh over the radio were often sent through Sesay and Bockarie, demonstrating that the chain of command from the Leader to the CDS to the BFC was respected and functioned properly.[3854] The content of these messages demonstrates that Kallon was in command of troops and conducting military operations. For instance, in May 1999, when Sankoh ordered Kallon to report on enemy movements within "his area," Kallon replied that "Magburaka, Makali, Matotoka, Masingbi, Mabonto and other important towns" were under control.[3855] Kallon also took troops to regain control of areas which had come under Kamajor attack.[3856]

2145. The Chamber is accordingly satisfied that Kallon's rank, position and assignments enabled him to effectively control troops in the Makeni-Magburaka area throughout 1999. There is evidence that Kallon ordered TF1-041 in Makeni to capture civilians for the mines in Kono.[3857] It is unclear whether Kallon's sphere of authority extended to RUF fighters in Kono District or whether Kallon's role was circumscribed to Magburaka.

2146. For the foregoing reasons, the Chamber finds that Kallon had effective control over the RUF fighters who carved "RUF" into the backs and arms of civilian men in Tomandu in May 1998; the RUF fighters who forcibly married TF1-016 and her daughter in Kissi Town between May and June 1998; and the RUF fighters who enslaved hundreds of civilians in camps throughout Kono District between February and December 1998. As this latter crime is of a continuous nature, we find it immaterial to Kallon's responsibility for its commission that he departed Kono District in August 1998.

[3852] Transcript of 25 May 2007, Issa Sesay, p. 41; Exhibit 32, RUF Radio Log Book, pp. 8668A, 8669, 8670, 8672, 8692; Exhibit 33, RUF Radio Log Book, p. 8758. The Chamber recalls that Kallon's radio code name was Sparrow and Kallon affirmed this in his testimony, Transcript of 11 April 2008, Morris Kallon, pp. 17-19; see Exhibit 34, RUF Radio Log Book.

[3853] *See* in this regard Exhibit 32, RUF Radio Log Book, pp. 8680-8682, in which Kallon reports to Sankoh in July 1999 that Gibril Massaquoi, who was aligned with Superman, was obstructing the movement of Kallon's men. Sankoh immediately orders Massaquoi to permit Kallon's men to depart from Makeni.

[3854] Exhibit 32, RUF Radio Log Book, pp. 8670 [Smile], 8672 [Hero], 8678 [Concord/Smile], 8683 [Concord/Smile]

[3855] Exhibit 32, RUF Radio Log Book, pp. 8645-8646, 8649.

[3856] Exhibit 32, RUF Radio Log Book, pp. 8681-8682.

[3857] Transcript 10 November 2005, TF1-366, pp. 2-6 (CS); Transcript of 22 June 2006, TF1-367, pp. 52-54; Transcript 10 July 2006, TF1-041, pp. 62-64.

2147. The Chamber finds that the Prosecution has not established that Kallon exercised effective control over the perpetrators of the crimes committed in Kono District between December 1998 and about 30 January 2000.

4.4.2. Actual or Imputed Knowledge

2148. The Chamber has found that Kallon occupied a supervisory role with respect to the civilian camps and we are therefore satisfied that Kallon had actual knowledge of the enslavement of civilians there. The Chamber is further of the view that the commission of the crime of 'forced marriage' was widespread in Kono District and indeed throughout Sierra Leone and we find that in these circumstances, Kallon had reason to know of the fighters who committed this crime at Kissi Town.

2149. However, the Prosecution has failed to establish that Kallon knew or had reason to know of the mutilation inflicted on the civilian men at Tomandu. We recall that Kallon, although a senior RUF Commander, did not occupy a formal position within the operational command structure of the RUF and it is therefore unclear to what extent he received reports on the actions of troops throughout Kono District. In particular, the Prosecution has not proven that Kallon was ever in Tomandu or had reason to know of events there. We therefore find that the Prosecution has not proved beyond reasonable doubt an essential element of superior responsibility and we find Kallon not liable under Article 6(3) for this act of mutilation.

4.4.3. Failure to Prevent or Punish

2150. The Chamber finds that Kallon failed to prevent or punish the commission of the crimes of enslavement and 'forced marriage' by his subordinates in Kono District.

2151. The Chamber therefore finds that Kallon is responsible under Article 6(3) of the Statute for the 'forced marriages' of TF1-016 and her daughter in Kissi Town between May and June 1998 and the RUF fighters who enslaved hundreds of civilians in camps throughout Kono District between February and December 1998.

4.5. Superior Responsibility of Gbao

2152. Having found Gbao liable for the crimes committed in Kono District between February 1998 and April 1998 through his participation in the AFRC/RUF joint criminal enterprise, Justice Boutet dissenting, the Chamber will proceed to determine his liability under Article 6(3) of the Statute for the crimes committed between April 1998 and about 30 January 2000.

2153. The Chamber recalls that Gbao was based in Kailahun District at the time of the Intervention and remained there until February 1999, when he was deployed to Makeni by Sesay, who was then the BFC. Gbao was the Overall Security Commander and Overall IDU Commander, in which assignment he monitored and supervised the various security units within the RUF. This assignment, however, did not entitle Gbao to exercise command and control over any RUF fighters or over the Overall Commanders of the various security units, or over any fighters or fighting units.[3858]

2154. In addition, the Chamber finds that there is insufficient evidence to establish that Gbao was involved with the operation of security units in Kono District from his base in Kailahun District and then in Makeni. During this period there is reasonable doubt as to whether Gbao possessed the material ability to control any RUF fighters in Kono District.

2155. The Chamber therefore finds that the Prosecution has failed to establish that Gbao was in a superior-subordinate relationship with the RUF fighters who perpetrated crimes in Kono District between April 1998 and about 30 January 2000.

5. Kailahun District from 30 November 1996 to 15 September 2000

5.1. Crimes committed in Kailahun District

2156. The Prosecution alleges that the Accused are individually criminal responsible pursuant to Article 6(1), or alternatively Article 6(3), of the Statute for crimes committed in Kailahun District between 14 February 1998 and the end of the Indictment period on about 15 September 2000. The Chamber has found that the following crimes were committed by RUF fighters in Kailahun District during this period:

[3858] *Supra* paras 840-844.

5.1.1. Unlawful Killings (Counts 1 to 5)

(i) Bockarie killed three civilians and ordered the killing of another 63 civilians in Kailahun Town on 19 February 1998 (Counts 1 to 5); and

(ii) One *hors de combat* SLA soldier was killed on Bockarie's orders in Kailahun on 19 February 1998 (Count 4).

5.1.2. Sexual Violence (Counts 1 and 7 to 9)

(i) TF1-314 was forcibly married to an RUF fighter between 1994 and 1998 (Counts 1 and 7 to 9);

(ii) TF1-093 was forcibly married to an RUF fighter between 1996 and 1998 (Counts 1 and 7 to 9); and

(iii) an unknown number of other women were forcibly married to RUF fighters between November 1996 and about 15 September 2000 (Counts 1 and 7 to 9).

5.1.3. Enslavement (Count 13)

(i) an unknown number of civilians were forced to work on RUF "government" farms and farms owned by Commanders from 30 November 1996 to about 15 September 2000;

(ii) an unknown number of civilians were forced to work and carry loads to and from different areas of Kailahun District from 30 November 1996 to about 15 September 2000;

(iii) an unknown number of civilians were forced to mine for diamonds in different areas of Kailahun District from 30 November 1996 to about 15 September 2000; and

(iv) an unknown number of civilians were forcibly trained for military purposes from 30 November 1996 to 1998 in Kailahun District.

5.2. Responsibility under Article 6(1) of the Statute

5.2.1. Personal Commission

2157. The Chamber finds that Sesay, Kallon and Gbao did not personally commit any of the crimes in Kailahun District.

5.2.2. Commission through Joint Criminal Enterprise

5.2.2.1. Existence of a Common Plan and Plurality of Persons

2158. The Chamber notes that the RUF maintained military and civil control in Kailahun District, and during the Junta period, the RUF sustained a widespread and systematic pattern of conduct which included conducting military training, such as the enlistment, conscription and use of children under the age of 15 years to participate in active hostilities; using enslaved civilians as labour on RUF "government" farms and in other areas; and, compelling women to remain in sexual slavery or to live in conjugal relationships with RUF fighters from which they were not free to leave.

2159. These widespread and systematic crimes were for the benefit of the RUF and the Junta in furthering their ultimate goal of taking political, economic and territorial control over Sierra Leone. We find it was only through their joint action that the AFRC and RUF were able to control the entire country, because the RUF needed the AFRC to access Kenema and Bo Districts, while the AFRC could not bring Kailahun within the sphere of the Junta Government control without cooperation from the RUF. Thus, RUF activities in Kailahun furthered the ultimate goal of joint political, economical and territorial control.

2160. The Chamber reiterates our finding above that a plurality of persons including the three Accused, Justice Boutet dissenting in respect to Gbao, participated in the joint criminal enterprise.

5.2.2.2. Participation

5.2.2.2.1. Sesay's and Kallon's participation in the Joint Criminal Enterprise

2161. The Chamber is satisfied that the particular participation of the Accused, Justice Boutet dissenting in respect to the participation of Gbao, set out above furthered the joint criminal enterprise and significantly contributed to the crimes committed in Kailahun District. Therefore the above findings on the particular participation of the Accused also apply, *mutatis mutandis*, to the enumerated crimes committed in Kailahun District from 25 May 1997 to April 1998.

2162. It is the Chamber's finding that the acts by Sesay and Kallon as found above amount to a significant contribution to the furtherance of the common purpose by securing revenues, territory and manpower for the Junta Government, and by aiming to reduce or eliminate civilian opposition to Junta rule.

2163. The Chamber therefore concludes that Sesay and Kallon intended to take power and control over the territory of Sierra Leone, in particular the diamond mining areas, and actively participated in the furtherance of the common purpose. By their participation they significantly contributed to the commission of acts of terror (Count 1), collective punishment (Count 2), unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9) and enslavement (Count 13) as enumerated above which were committed in Kailahun District between 25 May 1997 and April 1998. The Chamber finds that Sesay and Kallon shared with the other participants in the joint criminal enterprise the requisite intent to commit these crimes.

5.2.2.2.2. Gbao's Participation in the Joint Criminal Enterprise

2164. It is the Chamber's finding, Justice Boutet dissenting, that the acts by Gbao as found above amount to a significant contribution to the furtherance of the common purpose by securing revenue, territory and manpower for the Junta Government, and by aiming to reduce or eliminate civilian opposition to Junta rule.[3859]

2165. In respect of Counts 3 to 5, the Chamber is satisfied that the killing of the 64 suspected Kamajors in Kailahun Town was done to ensure, at any cost, the security of RUF territory. In addition, the killing of the Kamajors served to reinforce to civilians in RUF-controlled territory that there was no tolerance or sympathy for Kamajors. As such, it served to further consolidate RUF power over Kailahun District at a time when the joint AFRC/RUF forces were weakened after the fall of Freetown. For these reasons, the Chamber finds that the killing of these 64 individuals was done in furtherance of the common purpose of the joint criminal enterprise.

2166. The Chamber is satisfied that in relation to the killing of the 64 suspected Kamajors, Gbao intended the death of the Kamajors as a consequence of his failure to halt the executions. We are also satisfied that Gbao intended that this crime be committed in order to strengthen the power and control of the RUF over Kailahun District and the civilian population there, which in turn enhanced the power and capacity of the RUF to pursue the goals of the common purpose.

2167. In respect of the crimes of sexual violence (Counts 7 to 9) and enslavement (Count 13), the Chambers finds that in relation to those crimes in Kailahun District Gbao was directly

involved in the planning and maintaining of a system of enslavement. We find that Gbao shared the requisite intent for rape within the context of 'forced marriage' in order to further the goals of the joint criminal enterprise.

2168. The Chamber accordingly concludes that the ruthless killing of civilians, including the execution of 64 suspected Kamajors in Kailahun Town on 19 February 1998, the amputations, rapes, enslavement, 'forced marriages,' forced labour, and atrocious acts of terror perpetrated by the Accused, and other RUF Commanders and fighters, were a logical consequence to the pursuance of the goals prescribed in their ideology, the instruction on which, the Chamber recalls, was imparted particularly by Gbao, who was present during the execution in 1998 of 64 suspected Kamajors in Kailahun Town.

2169. Gbao, the Chamber recalls, had earlier screened these alleged Kamajors in his capacity as the Overall IDU Commander and was present during their subsequent execution, thereby participating in the commission of a crime against humanity under the rubric of the joint criminal enterprise as alleged by the Prosecution.

2170. The Chamber is strengthened in drawing this conclusion by the knowledge that Gbao was a strict adherent to the RUF ideology and gave instruction on its principles to all new recruits to the RUF. Thus the Accused, and in particular Gbao, either knew or had reason to know that the Commanders and the fighters under their command, would molest, maim or kill fleeing, retreating or captured civilians and that they knew or ought to have known that these civilians were not taking part in the hostilities.

2171. The Chamber further finds that the Accused, in maintaining their fidelity to their ideology, either knew or had reason to know that such crimes would be committed against innocent civilians who were designated as collaborators of the regime and as enemies to the AFRC/RUF Junta regime, by the RUF rebels in support of their "broad-based" struggle that the RUF ideology purported.[3860]

[3859] Justice Boutet fundamentally dissents on paras 2164-2172 *infra*.

[3860] RUF Training Manual, p. 11071. *See also* RUF Ideology Schoolbook, pp. 12 point III, 13 point XVI, 18 points 14, 22 points 3, 5.

2172. The Chamber, Justice Boutet dissenting, therefore concludes that Gbao, intended to take power and control over Sierra Leone, in particular the diamond mining areas, and actively participated in the furtherance of the common purpose and that by this participation he significantly contributed to the commission of acts of terror (Count 1), collective punishment (Count 2), unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9) and enslavement (Count 13) as enumerated above which were committed in Kailahun District between 25 May 1997 and 19 February 1998. The Chamber finds, Justice Boutet dissenting, that Gbao shared with the other participants in the joint criminal enterprise the requisite intent to commit these crimes.

2173. The Chamber has found that the joint criminal enterprise existed only from 25 May 1997 onwards as the Prosecution has only pleaded a joint criminal enterprise between members of the AFRC and RUF organisations for that period of time. The Chamber has found that the joint criminal enterprise ceased to exist in April 1998. However, the Chamber notes that, with the exception of unlawful killings (Counts 3 to 5), the time period for the crimes committed in Kailahun District runs from 30 November 1996 to September 2000. Given the continuous nature of these crimes, we find it would be impermissible to find the Accused responsible under the mode of joint criminal enterprise and subsequently under another mode of liability for the remainder of the time period in which these crimes were perpetrated. We accordingly will not consider further the Accused's responsibility for these crimes under any other mode of liability, notwithstanding that their commission continued beyond the termination of the joint criminal enterprise.

6. Koinadugu District from 14 February 1998 to 30 September 1998

2174. The Prosecution alleges that the Accused are individually criminal responsible pursuant to Article 6(1), or alternatively Article 6(3), of the Statute for the crimes of terrorism and collective punishment, (Counts 1 and 2), unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9), physical violence (Counts 10 and 11), conscription, enlistment and use of child soldiers (Count 12), enslavement (Count 13) and pillage (Count 14) committed in Koinadugu District between 14 February 1998 to 30 September 1998.

2175. The Chamber heard evidence of egregious criminal acts committed in Koinadugu District within the Indictment period. However, the Chamber recalls its finding that the fighters in Koinadugu District were under the command of SAJ Musa, Gullit or Superman, who were not acting in concert with or under the control of any of the Accused.[3861]

2176. In relation to the crimes committed in Koinadugu District the Chamber has found that the crimes in that district were primarily committed by AFRC troops under the command of SAJ Musa[3862] or Gullit. The Chamber has found that no joint criminal enterprise existed from the time Gullit moved out of Kono with the AFRC fighters to join SAJ Musa. The Chamber has found that Gullit and the AFRC fighters left Kono District because of a major dispute between the RUF and the AFRC. SAJ Musa, Gullit and other AFRC fighters contemplated their individual and separate plan that did not involve the RUF. They planned to attack the capital in order to "re-instate" the army. Therefore the Chamber has found that the joint criminal enterprise dissolved in April 1998.

2177. The Chamber has furthermore found that the Accused did not have any effective control over SAJ Musa, Gullit or any of the AFRC fighters that joined Gullit to Koinadugu District. In addition, the Chamber has found that the Accused did not have any effective control over Superman when he defected from the main RUF group in August 1998.

2178. Therefore the Chamber finds that the Accused are not responsible for any of the crimes committed in Koinadugu District between 14 February 1998 to 30 September 1998. The Chamber accordingly finds that the Prosecution has failed to prove beyond reasonable doubt that the Accused are liable under either Article 6(1) or Article 6(3) of the Statute for the crimes committed in Koinadugu District.

7. Bombali District from 1 May 1998 to 30 November 1998

2179. The Prosecution alleges that the Accused are individually criminally responsible pursuant to Article 6(1), or alternatively Article 6(3), of the Statute for the crimes of terrorism and collective punishment (Counts 1 and 2), unlawful killings (Counts 3 to 5), sexual violence

[3861] *Supra* paras 1499-1505.
[3862] Transcript of 12 July 2005, Closed Session, TF1-361, pp. 47-49.

(Counts 6 to 9), physical violence (Counts 10 and 11), conscription, enlistment and use of child soldiers (Count 12), enslavement (Count 13) and pillage (Count 14) committed in Bombali District between 1 May 1998 to 30 November 1998.

2180. The Chamber heard evidence of heinous criminal acts committed in Bombali District within the Indictment period. However, the Chamber recalls its finding that the fighters in Bombali District were under the command of SAJ Musa, Gullit or Superman, who were not acting in concert with or under the control of any of the Accused.[3863]

2181. The Chamber accordingly finds that the Prosecution has failed to prove beyond reasonable doubt that the Accused are liable under either Article 6(1) or Article 6(3) of the Statute for any crimes committed in Bombali District during the period between 1 May 1998 and 30 November 1998.

8. Freetown and the Western Area from 6 January 1999 to 28 February 1999

8.1. Crimes Committed in Freetown

2182. The Prosecution alleges the Accused are individually criminally responsible pursuant to Article 6(1), or alternatively Article 6(3), of the Statute for the crimes of terrorism and collective punishment (Counts 1 and 2), unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9), physical violence (Counts 10 and 11), conscription, enlistment and use of child soldiers (Count 12), enslavement (Count 13) and pillage (Counts 14) between 6 January and 28 February 1999. The Chamber recalls its Legal Findings on Freetown and the Western Area, wherein we have enumerated the crimes committed in respect of the Counts charged.[3864]

8.2. Responsibility under Article 6(1) of the Statute

8.2.1. Personal Commission

2183. The Chamber finds that the three Accused did not personally commit any of the crimes in Freetown and the Western Area.

[3863] *Supra* paras 1507-1509.
[3864] *Supra* paras 1568-1608.

8.2.2. Commission through Joint Criminal Enterprise

2184. The Chamber finds, in relation to the invasion of Freetown that the Prosecution has failed to prove that the three Accused and other senior RUF members, including Bockarie, were acting in concert with Gullit, Bazzy, Five-Five, SAJ Musa and other senior AFRC Commanders in order to take power and control over the territory of Sierra Leone. The Prosecution has neither established nor pleaded that there existed a new common plan between senior members of the RUF and AFRC.

8.2.2.1. The RUF Plan

2185. The Chamber recalls its findings that the RUF in Buedu planned a military operation to capture Freetown. The plan involved an attack by the RUF on Freetown from two flanks – one from the South, coming through Segbwema, Kenema Town and Bo Town, and the other from the North, to be led by Sesay, coming through Kono and Makeni.[3865] The Chamber has found that there is no evidence that a joint plan between the RUF and AFRC was discussed or authorised to the AFRC. Moreover, the relationship between Bockarie and the AFRC remained highly strained as the AFRC continued to operate independently.[3866] The Chamber considers that this lack of cooperation is consistent with SAJ Musa's refusal to work with the RUF and the distrust and animosity that existed between Gullit and the RUF in May 1998 when Gullit broke away from the RUF and took his fighters to Koinadugu District.

2186. According to their plan the RUF was able to capture Kono and Makeni by 24 December 1998. The Chamber notes that the Prosecution has not charged the Accused for any crime committed in Kono or Bombali District in December 1998, apart from the crimes alleged in Count 12 of the Indictment.

8.2.2.2. The AFRC Plan

2187. From the time that the AFRC forces moved out of Kono District and ceased to be part of the common plan, they contemplated their individual plan to capture Freetown and to

[3865] Transcript of 21 July 2006, TF1-371, pp. 45.
[3866] Transcript of 21 July 2006, TF1-371, pp. 47-48. TF1-360 also testified that the RUF's objective was to attack Freetown, however it emerged in cross-examination that in a prior statement the witness had explained that the RUF's goal was to retake Kabala and Makeni in order to protect Kono and Kailahun and to increase the territory controlled by the RUF so that they would be in an advantageous position should peace talks eventuate: Transcript of 25 July 2005, TF1-360, pp. 32-35.

"reinstate the army". This plan did not involve the RUF. SAJ Musa ordered Gullit to set up a base at Camp Rosos in Bombali District and met up with him there in November 1998. Soon after SAJ Musa's arrival with reinforcements the AFRC forces under his command advanced towards Freetown and arrived in Benguema on about 24 December 1998.

2188. Even though three RUF radio operators were part of the AFRC troops, they were prohibited by SAJ Musa from communicating with the RUF under the threat of death. However, they did send messages sporadically to Superman[3867] and Bockarie[3868] in contravention of this order. There is also some evidence of communication between O-Five and Superman during this period, and between Gullit and Bockarie,[3869] although this contact was contrary to SAJ Musa's direct orders.[3870] The Chamber notes that no evidence was adduced as to the specific content or nature of these communications.

2189. There was a small group of about twenty RUF fighters with the AFRC forces at this time, but they were not taking orders from the RUF command.[3871] They were under the effective command of Gullit at that point in time. In addition and compared to the large number of AFRC fighters of about 3000 men, the RUF contingent was ineffectual. The most senior RUF Commander amongst them was Major Alfred Brown, a radio operator.[3872]

2190. The Chamber therefore finds that it has not been established by Prosecution that a common purpose resurfaced or was newly contemplated between members of the AFRC and RUF before the advance on Freetown on 6 January 1999.

8.2.2.3. The AFRC Advance on Freetown

2191. The Chamber has found that after SAJ Musa's death Gullit contacted Bockarie to request reinforcements. Gullit told Bockarie that the AFRC lacked ammunition and logistical

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[3867] Transcript of 5 December 2005, TF1-184, pp. 29-30.
[3868] Transcript of 5 December 2005, TF1-184, pp. 29-30.
[3869] Transcript of 5 December 2005, TF1-184, pp. 29-30; Transcript of 21 July 2005, TF1-360, p. 36; Transcript of 18 October 2004, George Johnson, pp. 33-34; Transcript of 19 October 2004, George Johnson, pp. 72-73. *See also* Exhibit 119, AFRC Transcript of 13 June 2005, pp. 88-89; Transcript of 18 May 2007, Issa Sesay, pp. 77-78.
[3870] Transcript of 5 December 2005, TF1-184, p. 33; Transcript of 18 May 2007, Issa Sesay, p. 23
[3871] Transcript of 22 July 2005, TF1-360, pp. 16-17 (CS).
[3872] Transcript of 21 July 2005, TF1-360 (CS), p. 11; Transcript 5 December 2005, TF1-184, pp. 26-27

capabilities.3873 Bockarie advised Gullit to await RUF reinforcements in Benguema before moving on to Freetown.[3874]

2192. The Chamber finds the evidence on whether Bockarie sent reinforcements to the AFRC troops to be inconclusive and conflicting. For instance, there is some evidence that Bockarie told Gullit that his plan to attack Freetown was foolish.[3875] Furthermore, evidence suggests that Bockarie did not trust Gullit, as he believed that SAJ Musa was still alive and thought that Gullit was trying to trap him.[3876] It appears that as a result of these suspicions, Bockarie did not send the promised reinforcements prior to Gullit's arrival in Freetown.

2193. However, there is also evidence that suggests that RUF Rambo arrived at Waterloo on 5 January 1999, shortly after the AFRC troops had entered Freetown. The evidence suggests that RUF Rambo was not able to reinforce the AFRC troops as ECOMOG troops were deployed at Kossoh Town, blocking the way.

2194. Yet again according to the account of TF1-184, Gullit attempted to slow the advance of the AFRC fighters to wait until the promised RUF assistance arrived, but was pushed onwards towards Freetown by a Kamajor attack at Lion Mountain, near Benguema.[3877] On the other hand, TF1-360 testified that the AFRC decided to enter Freetown without reinforcements, despite Bockarie's promise. TF1-360 suggested that Gullit was outvoted by his fellow fighters.

2195. Junior Lion, offering another version of events, testified that the AFRC moved on to Hastings, arriving about the 4 January 1999, then waited for three days for RUF reinforcements to arrive. When the reinforcements were not forthcoming, the AFRC proceeded on to Freetown alone.

2196. In addition the Chamber notes that the communication only refers to reinforcements for a military operation and does not refer to the commission of crimes.

[3873] Exhibit 119, Transcript from AFRC Trial, Transcript of 13 June 2005, TF1-334, pp. 88-89.
[3874] Transcript of 21 July 2005, TF1-360, pp. 29-31.
[3875] Transcript of 21 July 2005, TF1-360, p. 31; Transcript of 18 October 2004, George Johnson, pp. 33-34; Exhibit 119, AFRC Transcript of 13 June 2005, TF1-334, p. 89.
[3876] Transcript of 18 October 2004, George Johnson, p. 33-34; Transcript of 7 July 2006, TF1-334, p. 42 (CS).
[3877] Transcript of 5 December 2005, TF1-184, p. 37.

2197. The Chamber is of the considered opinion that although some evidence suggests that there were communications between Bockarie and Gullit, the evidence does not demonstrate that their actions were coordinated. In fact, the weight of the evidence demonstrates that despite his promises to Gullit and his public claims to the contrary, Bockarie had no intention of sending reinforcements to assist Gullit prior to the latter's arrival in Freetown and did not do so. The Chamber, considering the totality of the evidence, is not satisfied that from late December 1998 until 6 January 1999, Bockarie and Gullit had agreed once again to work in concert to commit crimes under the Statute in order to take power and control over the territory of Sierra Leone.

8.2.2.4. Attack on the Freetown and capture of State House

2198. The Chamber has found that during the attack on Freetown beginning on 6 January 1999, horrendous crimes were committed by the fighters under Gullit's command.[3878] The AFRC fighters in Freetown, however, were encircled by ECOMOG forces within days of their arrival. Only at this point did Gullit contact Bockarie again, from the State House, for assistance. There is evidence that Bockarie terminated at least one communication received by Gullit at the State House after Bockarie had accused Gullit of not following his advice and failing to wait for reinforcements.[3879] We consider that once again this suggests that there was no genuine understanding and cooperation between the RUF and the AFRC. This incident further shows that Bockarie's announcement over the BBC that "his" troops had invaded Freetown was intended to overstate his actual role in the Freetown attack.[3880]

2199. There is also evidence that Bockarie instructed Gullit to burn strategic points, but Gullit informed Bockarie that these locations had already been burned.[3881] TF1-360 also testified that Bockarie advised Gullit to erect obstacles against ECOMOG. We observe that it generally appears that the communication would be more about military and strategic advice, but that Gullit had already taken actions before the advice was even received. We find that Gullit and the AFRC fighters had already contemplated the commission of the crimes which were committed by his troops in Freetown.

[3878] *Supra* para. 1514.
[3879] Transcript of 21 July 2005, p. 36 (CS).
[3880] *See* Exhibit 35, Salute Report from Sam Bockarie 26 September 1999.
[3881] Transcript of 21 July 2005, p. 36 (CS).

2200. In addition, the Chamber finds that Bockarie did not instigate any crimes committed by the AFRC under Gullit's command. The Chamber recalls that the AFRC troops from their movement through Koinadugu and Bombali Districts up to Freetown did commit and were notorious for the commission of the most brutal and horrendous crimes. Therefore, the Chamber finds that any communication did not prompt the commission of crimes as charged in the Indictment for Freetown and the Western Area.

2201. A small group of fighters from the main body of the RUF forces, led by AFRC member Rambo Red Goat, managed to link up with AFRC fighters in Freetown.[3882] There is evidence that Rambo Red Goat advanced into Freetown to assist his AFRC brothers in direct contravention of orders from Kallon.[3883] The weight of the evidence suggests that Bockarie only dispatched reinforcements once Gullit had reached Freetown.[3884] We note that there is no evidence that any of the Accused were part of these communications, nor that they were informed or acted pursuant to any agreement that could have been arrived at between Bockarie and Gullit with regard to the attack on Freetown and the Western Area.

8.2.2.5. Retreat from Freetown to Waterloo

2202. We have found that the AFRC fighters began to pull out of Freetown on 9 January 1999.[3885] George Johnson testified that Gullit sent a communication stating that the AFRC had lost Freetown because no reinforcements had been sent by the RUF.[3886] There is also evidence that Bockarie instructed Gullit to withdraw from Freetown to Kossoh Town to meet RUF reinforcements.[3887] Junior Marvin was sent by Gullit to link up with the expected RUF fighters at the Foamex factory, but once more, Bockarie's promised reinforcements did not arrive.[3888]

2203. Gullit contacted Bockarie to complain. In this communication Bockarie instructed Gullit to pull out of Freetown and join the RUF at Waterloo.[3889] We recall our finding that the

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[3882] Transcript of 5 December 2005, TF1-184, p. 54; Transcript of 7 July 2006, TF1-334, p. 42 (CS).
[3883] Transcript of 9 November 2005, TF1-366, p. 31 (CS).
[3884] Transcript of 18 May 2007, Issa Sesay, p. 77-79.
[3885] *Supra* paras 1511-1565.
[3886] Transcript of 19 October 2004, George Johnson, p. 73.
[3887] Transcript of 21 July 2005, TF1-360, p. 37 (CS).
[3888] Transcript of 18 October 2004, George Johnson, p. 60.
[3889] Transcript of 18 October 2004, George Johnson, p. 60.

AFRC fighters, led by Gullit, Bazzy and Five-Five, then withdrew to Waterloo, all the while committing crimes on a massive scale.

2204. RUF fighters led by Rambo RUF were sent from Port Loko to the Western Area by Sesay on Bockarie's orders and arrived on 6 January 1999 in Waterloo but were never able to reach the AFRC fighters as ECOMOG forces blocked their way.[3890] Fighters led by Superman also arrived in Waterloo, with Bockarie's consent. These fighters were dispatched in order to open an escape route for the retreating AFRC fighters.[3891] The main body of the RUF reinforcements advanced no further than Waterloo.[3892] Some fighters managed to get as far as Kossoh Town on 15 January 1999 for a brief period, but again were unable to join the AFRC troops and had to retreat because of massive ECOMOG reinforcements. We note from the evidence that it was not the RUF that opened the escape route for the trapped AFRC troops, but that the brief removal of the ECOMOG troops eventually led to a corridor that allowed the AFRC troops to eventually retreat to Waterloo.[3893]

2205. Based on the foregoing, the Chamber is not satisfied beyond reasonable doubt that a common purpose existed between Bockarie and Gullit and other members of the RUF and AFRC prior to the point when the AFRC began to retreat from Freetown to meet RUF reinforcements Moreover, even if a common criminal plan had existed between Bockarie and Gullit and other members of the RUF and AFRC after the AFRC retreat from Freetown began, we consider that the mere deployment of Rambo and RUF fighters in the direction of the Western Area does not amount to a significant contribution to crimes committed in Freetown. In addition, the Chamber finds that the communication between one high ranking member of the RUF giving advice that was not followed or that the action had already been carried out does not amount in the circumstances to a significant contribution to the commission of crimes in Freetown and the Western Area. The Chamber recalls again that the AFRC forces, under the command first of SAJ Musa and then Gullit, had displayed their brutality against the civilian population long before the attack on Freetown in January 1999.

[3890] Exhibit 227, Report to Sesay dated 21 January 1999.
[3891] Exhibit 36, Salute Report of Issa Sesay, p. 9.
[3892] Transcript of 18 October 2004, George Johnson, p. 58.
[3893] Transcript of 28 July 2005, TF1-036, p. 65 (CS).

2206. Moreover, we are not convinced that the only inference from the circumstantial evidence is that Bockarie and Sesay were working together with the AFRC fighters in pursuance of a renewed joint criminal enterprise after the retreat began and prior to the arrival of the AFRC fighters in Waterloo. Finally, the Chamber finds that there is no evidence to conclude that Sesay, Kallon or Gbao shared the intent of Gullit, Bazzy and Five-Five to commit crimes within the Statute during the AFRC retreat from Freetown in January 1999.

8.2.2.6. The meeting of RUF and AFRC troops in Waterloo

2207. In Waterloo, the retreating AFRC fighters, led by Gullit, Bazzy and Five-Five eventually met Kallon, Rambo RUF, Superman and other RUF fighters. Sesay arrived after the AFRC had retreated from Freetown.[3894] However, the Chamber finds that the relationship between the two groups of fighters was tense at that time. This is demonstrated by the fact that the RUF remained in their position at Waterloo and the AFRC established a position in nearby Benguema. In addition, RUF fighters started to search and confiscate looted goods and arms and ammunition from the retreating AFRC fighters and resulted in a great deal of animosity between the AFRC and the RUF.[3895]

2208. At that meeting a second attack on Freetown was discussed.[3896] However, there was a dispute with Superman who had incited AFRC fighters against Rambo RUF, in an attempt to provoke a breakdown in the command structure.[3897] Sesay and Kallon then tried to arrest Superman, but they failed because they were threatened at gunpoint by an AFRC Commander. Sesay and Kallon returned to Waterloo and Superman remained with the AFRC in Benguema.[3898]

2209. The Chamber finds that this evidence reinforces its conclusion that prior to the arrival of the AFRC fighters in Waterloo, Bockarie, Sesay, Superman and Kallon did not act in concert with Gullit, Bazzy and Five-Five, but rather that the RUF Commanders were acting independently in pursuance of their own objectives.

[3894] Transcript of 18 May 2007, Issa Sesay, pp. 84-85 (CS); Transcript of 9 November 2005, TF1-366, p. 25 (CS).
[3895] Transcript of 18 July 2005, TF1-361 pp. 62-63 (CS); Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, p. 104. See also Transcript of 15 November 2005, TF1-366, p. 27 (CS).
[3896] Exhibit 119, AFRC Transcript of 14 June 2005, p. 109.
[3897] Exhibit 36, Salute Report of Issa Sesay, p. 10.
[3898] Exhibit 119, AFRC Transcript of 14 June 2005, TF1-334, p. 109.

2210. Moreover, the Chamber has not found evidence of the commission of crimes after the retreat of the AFRC troops around the Waterloo and Benguema area.

2211. The AFRC retreated to Newton and stayed there for about a month. There, the senior Commanders including Sesay, Kallon, Gullit, Bazzy and Five-Five planned another counter-attack. This counter-attack was never carried out, however, due to some discord between the RUF and the AFRC.[3899] Sesay, Kallon, Superman departed to Makeni.[3900]

8.2.2.7. Finding

2212. The Chamber therefore finds that the Prosecution has not proved that the Accused are criminally responsible through a joint criminal enterprise for the commission of any of the crimes perpetrated in Freetown and the Western Area between 6 January 1999 and 28 February 1999.

8.2.3. Ordering, Planning, Instigating or Aiding and Abetting

8.2.3.1. Sesay

2213. The Chamber finds that there is no evidence that Sesay ordered, planned or instigated the commission of crimes by AFRC fighters in Freetown and the Western Area.

2214. The Chamber has found that Sesay ordered the deployment of RUF troops to Freetown but that these troops became mired in battle against ECOMOG forces and did not advance beyond Waterloo. The Chamber therefore finds that the deployment of the RUF troops did not render material assistance to the AFRC troops in the perpetration of the crimes committed in Freetown. The Chamber further finds that there is insufficient evidence on which to conclude that Sesay's conduct in implementing Bockarie's order constituted encouragement or moral support which had a substantial effect on the commission of the crimes. The evidence indicates that in fact many fighters among the retreating AFRC forces believed the RUF had failed to provide reinforcements and were disgruntled on this account.

[3899] Transcript of 18 October 2004, George Johnson, pp. 79-80; Transcript of 25 July 2005, TF1-360, pp. 48-50 (CS); Transcript of 9 November 2005, TF1-366, p. 27 (CS); Transcript of 21 July 2005, TF1-360, p. 49. See also Transcript of 6 December 2005, TF1-184, pp. 56-57.
[3900] Exhibit 119, AFRC Transcript of 15 June 2005, TF1-334, p. 13.

2215. The Chamber accordingly finds that Sesay is not liable under Article 6(1) of the Statute for aiding and abetting the commission of crimes in Freetown and the Western Area.

8.2.3.2. Kallon and Gbao

2216. The Chamber finds that the Prosecution has not established beyond reasonable doubt that Kallon or Gbao ordered, planned, instigated or aided and abetted the commission of crimes in Freetown.

8.3. Superior Responsibility of Sesay, Kallon and Gbao

2217. The Prosecution has not established that Sesay, Kallon or Gbao were in a superior-subordinate relationship with respect to the AFRC fighters in Freetown. The Chamber accordingly finds that the three Accused are not liable under Article 6(3) of the Statute for the crimes committed in Freetown and the Western Area between 6 January 1999 and 28 February 1999.

9. Port Loko District from February 1999 to April 1999

2218. The Prosecution alleges that the Accused are individually criminally responsible pursuant to Article 6(1) of the Statute, and/or alternatively Article 6(3) of the Statute, for the crimes/acts of terrorism and collective punishment (Counts 1 and 2), unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9), physical violence (Counts 10 and 11), conscription, enlistment and use of child soldiers (Count 12) and enslavement (Count 13) committed in Port Loko District between about February 1999 and April 1999.

2219. The Chamber heard evidence of criminal acts committed in Port Loko District within the Indictment period. However, the Chamber recalls its finding that the renegade AFRC fighters in Port Loko District were not at any time during the Indictment period acting in concert with or under the control of any of the Accused.[3901] The Chamber accordingly finds that the Prosecution has failed to prove that the Accused are liable under either Article 6(1) or Article 6(3) of the Statute for the crimes committed in Port Loko District.

[3901] *Supra* paras 1612-1613.

10. Conscription, Enlistment and Use of Child Soldiers (Count 12)

10.1. Crimes Committed under Count 12

2220. The Chamber has found that the RUF routinely used persons under the age of 15 to actively participate in hostilities between November 1996 and September 2000 in Kailahun, Kono and Bombali Districts.

10.2. Responsibility under Article 6(1) of the Statute

10.2.1. Personal Commission

2221. Although there is evidence that Sesay used child soldiers as bodyguards and in combat and that Kallon may have personally conscripted children by bringing them for training at Bunumbu, the Prosecution failed to plead these material particulars in the Indictment. Although the Prosecution disclosed to the Defence documents containing allegations that the Accused were seen with SBUs or used SBUs as bodyguards at various times throughout the Indictment period,[3902] we hold that this does not constitute clear, timely and consistent notice of the material facts pertaining to alleged personal commission of these crimes by the Accused. We are of the view that this failure to provide adequate and sufficient notice occasioned material prejudice to the Sesay and Kallon Defence in the preparation of their respective cases.

2222. We therefore find that none of the Accused are liable under Article 6(1) for the personal commission of the use of persons under the age of 15 to actively participate in hostilities.

10.2.2. Planning

10.2.2.1. Sesay

2223. The Chamber has found that the RUF practice of conscripting persons under the age of 15 into their armed group between 1997 and September 2000 in Kailahun, Kono and

[3902] *See*, for example, Prosecution Supplemental Pre-Trial Brief Pursuant to an Order to the Prosecution to File a Supplemental Pre-Trial Brief of 30 March 2004 as Amended by Order to Extend the Time for Filing of the Prosecution Supplemental Pre-Trial Brief of 2 April 2004, 21 April 2004.

Bombali Districts was conducted on a large scale and in an organised fashion.[3903]

2224. The Chamber has found that the RUF operated a well-run system of training bases, with the base at Bayama in 1997 being subsequently moved to Bunumbu and then to Yengema. The Chamber notes the evidence that one of the reasons for the move from Bayama to Bunumbu was so that the base would be closer to RUF Headquarters. At these RUF training bases, persons under the age of 15 were assigned into SBUs and undertook an organised training programme. The number of trainees, including SBUs, was reported to RUF High Command.[3904] There is documentary evidence of orders from the RUF Chief-of-Staff, Bockarie and other RUF Staff Commanders pertaining to the operation of the Camp Lion base at Bunumbu.[3905]

2225. We therefore find that the execution of this system of conscription required a substantial degree of planning and that this planning was conducted at the highest levels of the RUF organisation.

2226. The Chamber is satisfied that Sesay, as one of the most senior RUF Commanders, made a substantial contribution to the planning of this system of conscription. We have found that in June 1998, Sesay gave orders that "young boys" should be trained at Bunumbu and that he received reports on training at Bunumbu and subsequently at Yengema. Sesay also visited Camp Lion and addressed the recruits. Sesay told the trainees that they would be sent to the battlefield and that if they failed to comply with orders, they would be executed.

2227. The Chamber recalls that in December 1998, Sesay visited RUF fighters including children under the age of 15 who were preparing to conduct an attack on Daru. Sesay distributed drugs as "morale boosters" for these fighters. The Chamber has further found that Sesay's bodyguards, including persons under the age of 15, participated with Sesay in the attack on Koidu in December 1998 and accompanied Sesay as his security at Yengema in May 2000.

[3903] *Supra* paras 1694-1701.

[3904] *See* Exhibit 25, Report from Camp Lion Training Base Training Commandant, Buedu to the G-1 Commander at Buedu on Recruits, 21 May 1998, where the base is called "Camp Lion Training Base – Bunumbu."

[3905] *See* Exhibit 25, Report from Camp Lion Training Base Training Commandant, Buedu to the G-1 Commander at Buedu on Recruits, 21 May 1998; Exhibit 310, Memo from the G.S.O 1. War Office Buedu, to the Adviser, Trg Cmdt Deputy, dated 18 May 1998; Exhibit 312, Letter from the War Office G-1 to the Advisor, Training Base Buedu, dated 25 June 1998.

2228. The Chamber accordingly finds that Sesay directly participated in and made a substantial contribution to the planning and execution of the use of persons under the age of 15 to participate actively in hostilities.

2229. The Chamber is satisfied, given Sesay's active involvement in the training camps where large numbers of persons under the age of 15 were trained between 1997 and 2000, that Sesay intended the commission of this crime. We recall in this respect that in April 2000, during a meeting with Caritas in Makeni, Sesay expressed his concern that child combatants were being removed from the RUF, and RUF fighters were thereby losing 'their fighters.' We find this to demonstrate that Sesay knew that persons under the age of 15 were being used to actively participate in hostilities.

2230. The Chamber therefore finds Sesay liable under Article 6(1) of the Statute for planning the use of persons under the age of 15 to participate actively in hostilities in Kailahun, Kono and Bombali Districts between 1997 and September 2000, as charged in Count 12.

10.2.2.2. Kallon

2231. The Chamber reiterates its finding that the pattern of conscription and use of child soldiers within the RUF throughout the Indictment period required substantial planning. The Chamber finds that Kallon participated in the design and maintenance of this system of forced recruitment and use and that his contribution in this regard was substantial.

2232. Kallon was a senior RUF Commander during the attack on Koidu Town in February 1998 in which children were abducted in large numbers to be sent to RUF camps. In June 1998, Kallon and Sesay gave orders for children to be trained at RUF camps. Kallon also brought a group of children to Bunumbu for training in 1998. Further, we recall that Kallon was the senior RUF Commander on 3 May 2000 at Moria near Makeni where child soldiers were used in the ambush of UNAMSIL forces.

2233. We further find, given the imperative of using children within the RUF organisation and Kallon's participation as a senior Commander, that he intended that this crime be committed.

2234. On the basis of the foregoing, the Chamber finds Kallon liable under Article 6(1) of the Statute for planning the use of children under the age of 15 by the RUF to actively participate in hostilities in Kailahun, Kono and Bombali Districts between 1997 and September 2000.

10.2.2.3. Gbao

2235. The Chamber has found that Gbao loaded former child fighters onto a truck and removed them from the Interim Care Centre in Makeni in May 2000.[3906] We find this insufficient to constitute a substantial contribution to the widespread system of child conscription or the consistent pattern of using children to actively participate in hostilities. We further find that there is no other evidence that Gbao participated in the design of these crimes.

2236. The Chamber therefore finds Gbao not liable under Article 6(1) of the Statute for the conscription of persons under the age of 15 into the RUF or the use of children under the age of 15 by the RUF to actively participate in hostilities.

2237. The Chamber further concludes that the Prosecution has failed to establish that Gbao was in a superior-subordinate relationship with the perpetrators of these crimes. We accordingly find that Gbao is not liable under Article 6(3) of the Statute for the conscription of persons under the age of 15 into the RUF or the use of children under the age of 15 by the RUF to actively participate in hostilities.

11. Attacks on UNAMSIL personnel (Counts 15 to 18)

11.1. Crimes Committed under Counts 15 to 18

2238. The Chamber has found that the following crimes were committed in Bombali, Port Loko and Tonkolili Districts[3907] in relation to Counts 15 and 17:

(i) One UNAMSIL peacekeeper was assaulted and one UNAMSIL peacekeeper was abducted at Makump DDR camp on 1 May 2000 (Count 15);

[3906] *Supra* para. 1690.

[3907] We recall that the attacks on those peacekeepers abducted by RUF fighters continued in Kono District until their release.

(ii) Three groups of UNAMSIL peacekeepers were abducted in Makeni and one group of UNAMSIL peacekeepers was abducted in Magburaka on 1 May 2000 (Count 15);

(iii) Three UNAMSIL camps in Makump and Magburaka were attacked on 2 May 2000, resulting in the death of four peacekeepers (Counts 15 and 17);

(iv) Two groups of UNAMSIL peacekeepers were abducted near Moria village on 3 May 2000 (Count 15);

(v) UNAMSIL peacekeepers in Lunsar were attacked on 4 May 2000 (Count 15);

(vi) UNAMSIL personnel in Makeni were attacked on 7 May 2000 (Count 15); and

(vii) UNAMSIL personnel were attacked between Mile 91 and Magburaka on 9 May 2000 (Count 15).

11.2. Responsibility under Article 6(1) of the Statute

11.2.1. Sesay

2239. We recall that Rono and three other UNAMSIL peacekeepers were abducted by RUF fighters on 2 May 2000. This abduction was precipitated by a note to Rono purportedly from Sesay and Rono observed Sesay's car, which he recognised, outside his camp.[3908] We further recall that Rono and eight other detained peacekeepers were in the custody of RUF fighters at Matotoka, which is located between Makeni and Kono, with Sesay in the early hours of 3 May 2000.[3909]

2240. We have found that on 1 May 2000, Sesay was in Kono District and we have found that the Prosecution has not established that Sesay arrived in Makeni from Kono on 2 May 2000.[3910] Notwithstanding Sesay's subsequent involvement in the attack on Rono and three other peacekeepers, the Chamber finds the evidence insufficient to prove that Sesay was present at Rono's abduction or that he was aware of this crime prior to its occurrence.

2241. We therefore find that the Prosecution has not established beyond reasonable doubt that Sesay ordered, planned, instigated or otherwise aided and abetted the attack directed

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[3908] *Supra* para. 1809.
[3909] *Supra* paras 1816-1822.
[3910] The Chamber recalls that it is been proven only that Sesay was present in Makeni on 3 May 2000: *supra* para. 1815.

against Rono and three other KENBATT peacekeepers on 2 May 2000. The Chamber will assess Sesay's liability for this crime pursuant to Article 6(3) of the Statute below.[3911]

11.2.2. Kallon

11.2.2.1. Attack on Salahuedin

2242. The Chamber has found that Kallon struck Salahuedin in the face and attempted to stab him with a bayonet. Kallon physically perpetrated the attack and his intent to do so is clear from his aggressive words and by his hostile demeanour.[3912] The Chamber finds that Kallon intentionally directed an attack against Salahuedin at the Makump DDR Camp on 1 May 2000, as charged in Count 15.

2243. The Prosecution did not particularise the mode of personal commission in the Indictment.[3913] The failure to adequately plead the material facts in relation to Kallon's personal participation in this attack, in our opinion, renders the Indictment defective with regard to this act. The Chamber must therefore determine whether this defect was cured by clear, timely and consistent notice of the material facts to the Kallon Defence.

2244. The Prosecution disclosed the Witness Statement of TF1-042 indicating the material particulars on which the witness would testify including the direct participation of Kallon in physically assaulting a peacekeeper.[3914] In addition, the Prosecution filed on 12 July 2004 the "Prosecution Request for Leave to Call Additional Witnesses and Disclose an Additional Witness Statement" seeking an order for the call of additional witnesses including TF1-314 and TF1-362, both of whom would testify on the attacks on UNAMSIL personnel.[3915] In its Decision of 29 July 2004 granting the Motion, the Chamber held that "given that the trial of the Accused commenced on 5 July 2004, and the representation by the Prosecution that it

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[3911] *Infra* paras 2267-2284.
[3912] *Supra* para. 1791.
[3913] *Supra* paras 411-419.
[3914] Statement of Witness TF1-042 disclosed to Kallon on 26 May 2003, Sesay on 2 June 2003 and Gbao on 14 October 2003; Prosecution Request for Leave to Call Additional Witnesses and Disclose an Additional Witness Statement, filed 12 July 2004 (Motion): *see* paras.8 (v) of the Motion in which the Prosecution indicates that TF1-314 would testify about the individual criminal responsibility of Kallon during the abduction of the UN peacekeepers. While the statement of TF1-314 was taken on the 29 October 2003, the Prosecution only located the witness and verified her willingness to testify subsequently. The Prosecution disclosed the statement of TF1-314 on 7 February 2004: *see* para.13 (v) of the Motion.

would not be calling these witnesses until a much later stage in the trial, the Trial Chamber does not consider that the Defence would suffer any prejudice to its case. In particular, the Chamber finds that there is no element of surprise resulting in detriment to the Defence."[3916]

2245. The Chamber is satisfied that the Prosecution's Motion constituted sufficient notice to the Defence of the material elements. In addition, the Chamber is mindful that it granted this Motion on condition that the Prosecution would not call these witnesses before 1 January 2005. TF1-362 and TF1-314 ultimately testified in April and November 2005 respectively, thereby giving the Defence ample opportunity to investigate the allegations.[3917]

2246. The Chamber finds that the Kallon Defence was given sufficient notice of the material particulars hence curing the defect in the Indictment by clear, timely and consistent notice to the Defence. The Chamber is satisfied that Kallon's ability to prepare his Defence has not been materially prejudiced.

11.2.2.2. Abduction of Jaganathan

2247. The Chamber has found that Kallon ordered his men to "arrest" Jaganathan and stood by while a group of armed fighters kicked, punched and hit him with rifle butts and threatened him with a pistol. Once Jaganathan had been placed inside Kallon's vehicle with armed RUF fighters on either side, Kallon then ordered the driver of his vehicle to depart. Kallon continued to threaten Jaganathan thereafter.[3918]

2248. The Chamber finds that Kallon instructed various RUF fighters to carry out the assault and abduction of Jaganathan. Kallon used his position of authority as senior RUF Commander and BGC to compel his subordinates to commit the offence. We conclude that there is a clear nexus between Kallon's orders and the actions of his men and we find that Kallon intended his orders to be obeyed. We therefore find Kallon liable under Article 6(1) of the Statute for ordering the attack directed against Jaganathan on 1 May 2000 at the Makump DDR Camp, as charged in Count 15 of the Indictment.

[3915] Prosecution Request for Leave to Call Additional Witnesses and Disclose an Additional Witness Statement, filed 12 July 2004 (Motion).
[3916] Decision On Prosecution Request for Leave to Call Additional Witnesses and Disclose an Additional Witness Statement, filed 29 July 2004 (Decision), para.36
[3917] TF1-314 testified on 2, 4 and 7 of November 2005; TF1-362 testified on 19, 20, 22, 25 and 26 April 2005.
[3918] *Supra* paras 1791-1794.

11.2.2.3. Attack on Maroa and three peacekeepers

2249. The Chamber recalls that Kallon ordered rebels under his command to open fire on Maroa's UN Land Rover on 1 May 2000. RUF fighters complied with his order and the four peacekeepers who were in the vehicle were captured and brought to Kallon.[3919] The Chamber is satisfied that Kallon as BGC was in a position of authority over the fighters, that he had effective control over them,[3920] and that they were acting at his direction.

2250. The Chamber finds Kallon liable under Article 6(1) of the Statute for ordering the attack directed against Maroa and three peacekeepers on 1 May 2000, as charged in Count 15.

11.2.2.4. Abduction of Mendy and Gjellesdad

2251. The Chamber recalls that when Mendy and Gjellesdad arrived at the RUF Task Force Office in Makeni, Kallon told Gjellesdad to hand over the keys to their vehicle. Kallon told Gjellesdad that he would be taken captive and when Mendy explained that he would not return to his team site alone, Kallon stated that he would also be taken captive. Kallon told the peacekeepers that his men would escort them to Teko Barracks. The peacekeepers were accompanied by armed RUF fighters to Teko Barracks and on arrival there they were placed in confinement with the other peacekeepers.[3921]

2252. The Chamber finds that the fighters who took the peacekeepers to Teko Barracks were acting on the instructions of Kallon, who used his position of command and authority to direct his subordinates to commit the offence of attacking these two peacekeepers.

2253. The Chamber accordingly finds Kallon liable under Article 6(1) of the Statute for ordering the attack directed against Mendy and Gjellesdad on 1 May 2000, as charged in Count 15.

11.2.2.5. Abduction of Kasoma and ten peacekeepers

2254. We recall that on 3 May 2000, RUF fighters halted Kasoma's convoy at the roadblock and induced Kasoma and ten peacekeepers to move forward into an ambush. After being

[3919] *Supra* paras 1795-1802.
[3920] *Infra* paras 2285-2289.
[3921] *Supra* para. 1804.

forcibly disarmed, Kasoma was taken by RUF fighters including Gbundema to an RUF Commander who forced him to write a note at gunpoint.[3922] The Chamber has found that this Commander was Kallon and that Gbundema was subordinate to him.[3923]

2255. The Chamber is satisfied on the basis of Kallon's command position and the fact that Kasoma was brought to him that the fighters who attacked Kasoma and his ten peacekeepers were acting on Kallon's instructions. The Chamber therefore finds Kallon liable under Article 6(1) of the Statute for ordering the attack directed against Kasoma and ten peacekeepers on 3 May 2000, as charged in Count 15 of the Indictment.

11.2.2.6. Abduction of Kasoma's convoy

2256. The Chamber has found that after being forced to write a note to his second-in-command, Kasoma was escorted into the bush and detained under armed guard by RUF fighters. He next saw Kallon after approximately three hours when he was taken to a vehicle which transported Kasoma and the ten peacekeepers to Makeni. The rest of Kasoma's convoy of peacekeepers, who had remained at the roadblock while he moved forward with only ten men to meet Kallon, were in Makeni and under the control of RUF fighters when Kasoma arrived there.[3924] From this sequence of events, the Chamber finds that while Kasoma was under armed guard in the bush, RUF fighters abducted his convoy and moved them towards Makeni.

2257. The Chamber finds that Kallon's conduct in forcing Kasoma to write the note to his second-in-command, establishes a clear nexus between Kallon's actions and the subsequent abductions. The Chamber further recalls that approximately 1000 RUF fighters were present at the roadblock where the abductions took place and the peacekeepers were subsequently taken to Sesay in Makeni, where Kallon arrived shortly thereafter with Kasoma. In addition, the Chamber has found that Gbundema was giving orders at the roadblock where Kasoma's convoy was ambushed.[3925] The Chamber finds it is inconceivable that such a large military operation would be conducted by Kallon's subordinate Commander without the express

[3922] *Supra* para. 1839.
[3923] *Supra* para. 1856.
[3924] *Supra* para. 1833.
[3925] *Supra* para. 1858.

authority of Kallon, who was the BGC and the most senior RUF Commander present at the time. Based on the foregoing, the Chamber finds that it is the only reasonable inference that Kallon ordered the abduction of the peacekeepers in Kasoma's convoy.

2258. The Chamber accordingly finds Kallon liable under Article 6(1) of the Statute for ordering the attack directed against Kasoma's convoy of approximately 100 peacekeepers on 3 May 2000, as charged in Count 15 of the Indictment.

11.2.2.7. Attack on ZAMBATT at Lunsar

2259. The Chamber recalls that following the abductions of Kasoma's peacekeepers at nightfall on 3 May 2000, a group of RUF fighters marched to Lunsar and staged a dawn attack on the remainder of Kasoma's contingent using weapons captured from the ZAMBATT peacekeepers. Although there is a nexus between the attacks on 3 May 2000 at Moria and the subsequent attack at Lunsar, the Chamber recalls that Kallon returned to Makeni on the evening of 3 May 2000 and that many of the troops who participated in the Moria attacks escorted the captured peacekeepers to Makeni.[3926] It is not clear whether another Commander or Commanders remained with the balance of the attackers near Moria. Furthermore, the evidence does not establish that Kallon was aware at the time of the abductions on 3 May 2000 or that Kasoma had left a contingent of ZAMBATT peacekeepers stationed at Lunsar. The Chamber thus finds that there is reasonable doubt as to whether Kallon intended or had knowledge that RUF fighters would move to Lunsar to launch a further attack, thus precluding liability under Article 6(1) of the Statute.

2260. We therefore find that the Prosecution has failed to adduce sufficient evidence to establish that Kallon ordered, planned, instigated or aided and abetted the attack directed against ZAMBATT peacekeepers at Lunsar on 4 May 2000. The Chamber will accordingly consider Kallon's liability for this attack pursuant to Article 6(3) of the Statute.

11.2.3. Gbao

11.2.3.1. Attacks on Salahuedin and Jaganathan

[3926] *Supra* paras 1834-1837.

2261. The Chamber has found that on 1 May 2000, when Kallon assaulted Salahuedin and ordered his men to arrest Jaganathan, Gbao was present at the DDR Camp. The Chamber recalls that Gbao had been the first RUF Commander on the scene, he was accompanied by 30 to 40 armed RUF fighters and he was uncooperative and aggressive in his interaction with Jaganathan and Odhiambo at the camp, refusing to communicate with them and refusing to leave the camp. Furthermore, we have found that Gbao was not initially armed but that as Jaganathan was dragged towards Kallon's vehicle and placed inside, Gbao was standing at the vehicle armed with an AK-47. Gbao did not respond when Jaganathan attempted to speak to him.[3927]

2262. The Chamber is cognisant that Kallon, as BGC, was senior to Gbao in the RUF command structure. We observe that proof of aiding and abetting does not require Gbao to have possessed the material ability to prevent the abduction.[3928] Nonetheless, the Chamber does not accept that Gbao did not act on account of Kallon's seniority. Gbao and Kallon were both Vanguards and knew each other well. Gbao was the senior RUF Commander present until Kallon's arrival and he remained the Commander with the largest number of fighters present.

2263. Rather, the Chamber finds that Gbao deliberately fomented an atmosphere of hostility and orchestrated an armed confrontation at the Makump DDR camp and that Gbao's actions in arming himself with an AK-47 amounted to tacit approval of Kallon's conduct. We therefore find that Gbao's conduct before and during the attacks on Salahuedin and Jaganathan had a substantial effect on their perpetration.

2264. The Chamber further finds that the only reasonable inference to be drawn from the evidence is that Gbao possessed the requisite *mens rea* as he took up arms and stood by while the attacks were carried out and in so doing he intended to assist Kallon in their commission.

2265. The Chamber therefore finds Gbao liable under Article 6(1) of the Statute for aiding and abetting the attacks directed against Salahuedin and Jaganathan on 1 May 2000, as charged in Count 15.

[3927] *Supra* para. 1786.
[3928] *See* Transcript of 21 June 2006, Ganese Jaganathan, pp. 24-26.

11.2.3.2. Abduction of Rono's group

2266. The Chamber is of the view that Ngondi's testimony that he was subsequently told that Gbao was present at the abduction of Rono is not sufficient to establish this fact. The Chamber therefore finds that Gbao is not liable under Article 6(1) for this attack.

11.3. Responsibility under Article 6(3) of the Statute

11.3.1. Superior Responsibility of Sesay

11.3.1.1. Existence of a Superior-Subordinate relationship

2267. The Chamber recalls its findings on Sesay's command role from February 1999 to September 2000. In May 2000, Sesay remained BFC.[3929]

2268. Sesay gave frequent orders to his deputy Kallon in relation to UNAMSIL peacekeeping personnel, the dismantling of checkpoints and various other operational issues.[3930] Kallon contacted Sesay seeking his instructions regarding the construction of DDR camps in March 2000.[3931] Commanders also sent messages regarding disarmament to Sankoh through Sesay.[3932] We conclude from this evidence that the chain of command with Sankoh as the Leader, Sesay as BFC and Kallon as BGC functioned effectively prior to Sankoh's arrest on 8 May 2000. However, we observe that Sankoh's role encompassed primarily political issues and oversight of the RUF organisation as a whole. We find that Sesay was effectively the overall military Commander of the RUF on the ground.

2269. This conclusion is borne out by the evidence that between February and May 2000, it was Sesay who most regularly transmitted orders to RUF fighters, including orders to "all stations" and "all Commanders." Many of these orders pertained to UNAMSIL personnel.[3933] The Chamber concludes that during this period Commanders implemented Sesay's orders,

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[3929] *Supra* para. 927.
[3930] Exhibit 212, RUF Radio Log Book, pp. 28041-28043, 28045, 28054-28055, 28058-28059, 28065.
[3931] Exhibit 33, RUF Radio Log Book, p. 8803
[3932] Exhibit 33, RUF Radio Log Book, p. 8799.
[3933] Exhibit 212, RUF Radio Log Book, p. 28020, 28030, 28035, 28043, 28051-28052; Exhibit 212, RUF Radio Log Book, p. 28081. The Chamber notes that the orders in respect of UNAMSIL personnel included an order in February 2000 not to harass or intimidate UNAMSIL personnel: Exhibit 212, RUF Radio Log Book, p. 28020.

reported back to him and actively sought orders from him.[3934] Sesay was able to assign Commanders to particular Brigades.[3935]

2270. We find that Commanders reported to Sesay on issues requiring disciplinary action.[3936] Several peacekeepers testified that from their observations and interactions with RUF fighters, Sesay was a strict disciplinarian and a respected Commander whose subordinates were highly loyal to him.[3937]

2271. The Chamber finds that Sesay issued orders to and received reports from Commanders in Kono, Kenema and Kailahun Districts as well as those in the Makeni-Magburaka-Lunsar area.[3938] For instance, on 3 May 2000 an RUF Commander in Kailahun, Co. Martin George, provided a situation report to Sesay to inform him that on 2 May 2000, in view of 'the prevailing situation in the north and to avoid confrontation on this side' he and his men had arrested 28 peacekeepers and seized their equipment, including a helicopter. The Commander concludes by requesting instructions: 'Sir, situation is under control. Sir, advice.'[3939] Based on the foregoing the Chamber is satisfied that in April and May 2000 Sesay's effective command extended over a wide geographic area of Sierra Leone.

2272. The RUF operated numerous checkpoints to monitor and regulate movement in their territory.[3940] In the months leading up to May 2000, RUF Commanders throughout Sierra Leone repeatedly reported the movements of UNAMSIL personnel in their areas to Sesay. Commanders frequently contacted Sesay when UNAMSIL personnel sought access to their areas of responsibility and often awaited Sesay's instructions prior to permitting such access.[3941] Sesay was also the Commander that peacekeepers in the Makeni area contacted to obtain prior authorisation for their men to move.[3942] The Chamber recalls that Sesay was known to UN

[3934] Exhibit 212, RUF Radio Log Book, p. 28021, 28034, 28036-28038, 28040, 28073.
[3935] Exhibit 212, RUF Radio Log Book, p. 28060.
[3936] Exhibit 212, RUF Radio Log Book, p. 28027
[3937] Transcript of 11 March 2008, Muhammad Ali Hassan, p. 153.
[3938] Exhibit 212, RUF Radio Log Book, p. 28031 (Tongo Field, Kenema), p. 28033 (Kono).
[3939] Exhibit 34, RUF Radio Log Book, p. 8099-8100; Exhibit 212, RUF Radio Log Book, pp. 28068-28069. *See* Transcript of 25 July 2005, TF1-360, p. 85, where the witness explains that Co. Martin George is the RUF Commander in Kailahun. *See also* Exhibit 212, RUF Radio Log Book, p. 28097.
[3940] *See* Transcript of 23 May 2007, Issa Sesay, p. 27; Transcript of 22 October 2007, DIS-069, p. 24.
[3941] Exhibit 33, RUF Radio Log Book, pp. 8785-8787, 8789, 8798, 8801, 8806, 8812, 8817, 8825-8827, 8829; Exhibit 212, RUF Radio Log Book, p. 28027-28028, 28041, 28046, 28052, 28061.
[3942] Transcript of 26 June 2006, Joseph Mendy, p. 93.

peacekeepers in the Makeni-Magburaka area, including the KENBATT Commander Ngondi, as the Commander of the RUF.[3943]

2273. The Chamber is therefore satisfied that Sesay exercised effective control over RUF fighters in the Makeni area, including Kallon, who perpetrated the attacks directed against UNAMSIL personnel on 1, 2 and 7 May 2000.

2274. On 3 May 2000, Sesay reported to Sankoh that he had received information that UNAMSIL peacekeepers were travelling from Mile 91 towards Magburaka with 15 vehicles. Sesay informed Sankoh: "I have gone there to put situation [sic] under control in the best way possible."[3944] The Chamber also recalls that Sesay informed the captured peacekeepers at Matotoka, near Magburaka, in the early hours of 3 May 2000 that he was aware that a large contingent of ZAMBATT peacekeepers had been deployed from Freetown to Lunsar. Sesay stated words to the effect of "Our men are ready for them. Send in your men."[3945]

2275. On 3 May 2000 Sesay also sent a message to the Brigade Commander in Kono ordering him to 'keep strong security' in Kono and destroy all "motorable" [sic] roads leading to Masingbi.[3946] That same day, the Brigade Commander reported to Sesay that the peacekeepers had suffered a truck accident and several were injured.[3947] The Chamber recalls that on 4 May 2000, the Brigade Commander for Kono reported to Sesay on the numbers of captive peacekeepers in his custody.[3948] These messages demonstrate the regularity with which Sesay was in contact with his Commanders and the detailed extent to which he monitored and controlled the events unfolding with the UNAMSIL peacekeepers. The Chamber therefore finds that Sesay exercised effective control over the Brigade Commander of Kono District, who

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[3943] *Supra* para. 927.
[3944] Exhibit 34, RUF Radio Log Book, p. 8101
[3945] *Supra* para. 1818.
[3946] Exhibit 212, RUF Radio Log Book, p. 28070. This is followed by the script 'Infos from the Leader that the hostages are not to be molested as they are on negotiations for their release', dated 4 May 2000, although it is unclear if this is a radio message and if so, to whom and from whom: Exhibit 212, RUF Radio Log Book, p. 28070.
[3947] Exhibit 212, RUF Radio Log Book, p. 28069. Although the message does not refer specifically to the UNAMSIL peacekeepers, the Chamber is satisfied from the timing and content of the message and the fact that the peacekeepers were sent to the Brigade Commander that the only reasonable inference is that he refers to the same accident which befell the peacekeepers from Teko Barracks en route to Small Sefadu: *supra* paras 1815-1822.
[3948] *Supra* para. 1848.

in turn was the Commander of the RUF fighters who detained the peacekeepers at Yengema and Small Sefadu.

2276. The Chamber further recalls that Sesay was present at Matotoka and presided over the movements of the peacekeepers from Teko Barracks to Small Sefadu.[3949] Sesay also ordered the transportation of the captured ZAMBATT and KENBATT peacekeepers to Kono following their abduction at Moria.[3950] The Chamber further recalls that Sesay visited the captive peacekeepers at Yengema and ordered that they be kept as 'prisoners of war' and stripped of their belongings. RUF fighters complied with these orders.[3951]

2277. On 4 May 2000, Gbundema reported to Sesay that his deputy Col. Bai Bureh "has put the UNAMSIL under full control. They are presently at Kambia Town along with their belongings [...] The UNAMSIL are about one company. Sir, advice."[3952] Although it is unclear to which group of peacekeepers this message refers, the Chamber finds that this message establishes that Gbundema and Col. Bai Bureh are subordinate to Sesay as BFC and accordingly Kallon as BGC. The Chamber is therefore satisfied that Sesay was in command of and exercised effective control over the perpetrators of the attacks on 3 and 4 May 2000.

2278. In relation to the attack on UNAMSIL peacekeepers between Mile 91 and Magburaka on 9 May 2000, the Chamber finds that on 10 May 2000, Sesay ordered RUF fighters to 'destroy to road linking between Magburaka and Mile 91 and if possible attack and capture.'[3953] The identity of the persons who are to be captured is not clear and the message appears to have been sent after the attack occurred. Nonetheless, this message demonstrates that Sesay effectively controlled RUF fighters in the Magburaka area and accordingly the perpetrators of the attacks on UNAMSIL peacekeeping personnel on 9 May 2000.

2279. On the basis of the foregoing evidence, the Chamber finds that Sesay exercised effective control over RUF fighters throughout Sierra Leone and particularly in the area of Makeni, Magburaka and Kono and that he was in full command of the operations of the RUF troops in

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[3949] *Supra* paras 1815-1822.
[3950] *Supra* paras 1834-1835.
[3951] *Supra* para. 1864.
[3952] Exhibit 212, RUF Radio Log Book, p. 28072.

relation to UNAMSIL peacekeeping personnel in late April and May 2000. The Chamber accordingly finds that Sesay was in a superior-subordinate relationship with the perpetrators of the attacks directed against UNAMSIL peacekeeping personnel in May 2000.

11.3.1.2. Actual or Imputed Knowledge

2280. The Chamber finds that Sesay knew of the attacks on 1 and 2 May 2000 in Makeni and Magburaka as he was specifically sent by Sankoh to investigate them. The evidence also establishes that Sesay knew of the abductions of peacekeepers on 3 May 2000, due to his personal interaction with the captive peacekeepers at Makeni and subsequently at Yengema. In relation to the attack on the ZAMBATT peacekeepers at Lunsar on 3 May 2000 and the attacks on 7 and 9 May 2000, the Chamber finds that given the effective functioning of the chain of command and the regular reporting of Commanders to Sesay on matters pertaining to UNAMSIL personnel, the only reasonable inference to be drawn is that Sesay was informed of these events. The Chamber therefore finds that Sesay had actual knowledge of the attacks on UNAMSIL personnel.

2281. The Chamber finds untenable the submission of the Sesay Defence that Sesay believed there was a conflict between UNAMSIL and the RUF initiated by UNAMSIL.[3954] Although the Chamber accepts that some RUF fighters may have felt threatened by or uncertain about the disarmament process, the Chamber finds Sesay's characterisation of the situation as "likely to lead to combat" exaggerated and without reasonable foundation in light of the peacekeepers' mandate and the nature of their interaction with the RUF prior to the attacks. We recall that Sesay had met with Ngondi, the UNAMSIL Commander in Makeni, on several occasions and Ngondi had reiterated that UNAMSIL wished to work with the RUF cooperatively and peacefully to implement disarmament.[3955] Moreover, we find that Sesay as BFC was constantly briefed by his subordinates in relation to the UNAMSIL peacekeepers. We therefore find that he was aware that the attacks between 1 and 9 May 2000 were initiated by the RUF.

[3953] Exhibit 212, RUF Radio Log Book, p. 28074. As the radio message is addressed solely to the 'Doer of the Act', the identity of the person or persons to whom the order is addressed is unclear. The Chamber finds that it is nonetheless the only reasonable inference that the addressees of the message were RUF fighters.
[3954] Sesay Defence Final Trial Brief, paras 1229-1332.
[3955] *Supra* para. 1774.

2282. The Chamber finds that even if Sesay did not have actual knowledge of all of the attacks, he possessed ample information to put him on notice of them. Sesay was in receipt of information that attacks on UNAMSIL personnel were taking place apart from those in which he was personally involved.[3956] In such circumstances, it was incumbent on Sesay as BFC and the most senior RUF Commander in the Makeni area to make enquiries to discover the full extent of the attacks. The Chamber therefore finds in the alternative that Sesay had reason to know of all of the attacks directed against UNAMSIL personnel in May 2000.

11.3.1.3. Failure to Prevent or Punish

2283. The Chamber finds that Sesay made no attempt to prevent or punish the attacks against UNAMSIL peacekeepers. Although Sesay was sent to Makeni by Sankoh specifically in response to the attacks on 1 and 2 May 2000, there is no evidence that Sesay issued orders for the attacks to stop or instigated investigations among his troops. To the contrary, the Chamber recalls that Sesay actively prolonged the attacks on the captured peacekeepers at Yengema by ordering that they be kept as "prisoners of war."[3957]

2284. The Chamber therefore finds Sesay liable under Article 6(3) of the Statute for failing to prevent or punish his subordinates for directing 14 attacks against UNAMSIL personnel and killing four UNAMSIL personnel in May 2000, as charged in Counts 15 and 17.

11.3.2. Superior Responsibility of Kallon

11.3.2.1. Existence of a Superior-Subordinate relationship

2285. The Chamber recalls its findings on the command role of Kallon as BGC from February 1999 to September 2000 and in particular that the Makeni-Magburaka area fell specifically within Kallon's area of responsibility.[3958]

2286. The Chamber has found that the chain of command between Sankoh, Sesay and Kallon functioned effectively at the time of the UNAMSIL attacks.[3959] The Chamber is satisfied that as BGC, Kallon was *de jure* and *de facto* the third-in-command in the RUF hierarchy.

[3956] The Chamber recalls in this regard the radio message sent to Sesay by Co. George in Kailahun: *supra* para. 2271.
[3957] *Supra* para. 1864.
[3958] *Supra* paras 928-929.

Kallon issued orders to Battalion Commanders[3960] and orders addressed to 'all Commanders' and these orders were implemented.[3961] We find that Gibril Massaquoi, a senior RUF member formerly loyal to Superman, by that time was reporting to Kallon regarding military operations.[3962] In particular, the Chamber notes that Gbundema reported to Kallon and sought instructions from him[3963] as did Kailondo[3964] and Alfred Touray.[3965] The Chamber recalls that Touray was the RUF Commander involved in the 9 May 2000 attacks on UNAMSIL peacekeepers. We conclude that Kallon exercised effective control over all of these Commanders.

2287. We find that between February and May 2000, Kallon issued orders to his subordinates, including orders regarding UNAMSIL personnel.[3966] Commanders reported to Kallon regarding the UNAMSIL peacekeepers and sought instructions;[3967] Commanders implemented Kallon's orders and reported back to Kallon and Sesay;[3968] Kallon implemented and passed on Sesay's orders;[3969] and Kallon proposed promotions to Sesay.[3970]

2288. Kallon was also in direct contact with Sankoh, who passed orders to him.[3971] The Chamber notes that on one occasion Kallon reported to Sankoh on disciplinary action he had undertaken with respect to one of the RUF fighters who had been involved in a car accident while driving a Red Cross vehicle.[3972] On another occasion, Sankoh ordered Kallon to investigate an alleged transgression by an RUF fighter and instructed Kallon to discipline the fighter if caught.[3973] On a third occasion, Kallon ordered one of his subordinates to arrest a

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[3959] *Supra* paras 924-926, 929-930.
[3960] Exhibit 212, RUF Radio Log Book, p. 28066.
[3961] Exhibit 212, RUF Radio Log Book, p. 28090, 28092-28093, 28097-28100, 28103-28108, 28112, 28114 , 28119-28120.
[3962] Exhibit 212, RUF Radio Log Book, p. 28083.
[3963] Exhibit 212, RUF Radio Log Book, pp. 28095-28096.
[3964] Exhibit 212, RUF Radio Log Book, p. 28050.
[3965] Exhibit 212, RUF Radio Log Book, p. 28082.
[3966] Exhibit 212, RUF Radio Log Book, pp. 28023, 28035, 28046, 28048, 28054, 28057, 28060
[3967] Exhibit 212, RUF Radio Log Book, pp. 28021-28022, 28029-28032, 28050; Exhibit 212, RUF Radio Log Book, p. 28059.
[3968] Exhibit 212, RUF Radio Log Book, pp. 28026; Exhibit 212, RUF Radio Log Book, p. 28082.
[3969] Exhibit 212, RUF Radio Log Book, pp. 28044, 28050, 28053; Exhibit 212, RUF Radio Log Book, p. 28058.
[3970] Exhibit 212, RUF Radio Log Book, p. 28079.
[3971] Exhibit 212, RUF Radio Log Book, p. 28065.
[3972] Exhibit 33, RUF Radio Log Book, p. 8811.
[3973] Exhibit 212, RUF Radio Log Book, pp. 28042.

fighter and this order was implemented.[3974] This evidence demonstrates that Kallon possessed the ability to punish his subordinates.

2289. The Chamber is therefore satisfied that Kallon was in a superior-subordinate relationship with the perpetrators of the attacks directed against UNAMSIL personnel in May 2000.

11.3.2.2. Actual or Imputed Knowledge

2290. The Chamber recalls Kallon's message to Sankoh of 3 May 2000 and finds that it establishes that Kallon knew of those attacks in Makeni and Magburaka on 1 and 2 May 2000 in which he did not participate. In respect of the attacks on 4, 7 and 9 May 2000, the Chamber finds that Kallon had reason to know of the attacks due to his senior command role in the Makeni-Magburaka area, in the exercise of which he received regular reports from his subordinates.

11.3.2.3. Failure to Prevent or Punish

2291. The Chamber finds that Kallon made no attempt to prevent or punish the perpetrators of the attacks on UNAMSIL personnel.

2292. The Chamber therefore finds Kallon liable under Article 6(3) of the Statute for eight attacks intentionally directed against UNAMSIL personnel in May 2000 and the killing of four UNAMSIL personnel, as charged in Counts 15 and 17.

11.3.3. Superior Responsibility of Gbao

2293. The Chamber recalls its findings on the command role of Gbao within the RUF organisation between February 1999 and September 2000. The Chamber has found that Gbao's disciplinary powers in relation to minor offences were enhanced and that he possessed greater authority and influence over RUF fighters than previously in Kailahun District.[3975]

[3974] Exhibit 212, RUF Radio Log Book, pp. 28091-28092.
[3975] *Supra* paras 936-939.

2294. However, the Chamber is cognisant that proof of a superior-subordinate relationship requires evidence of the ability to effectively control troops in the conduct of operations. Gbao, as OSC, did not formerly possess this ability.

2295. Sesay testified that in his absence, Kallon, Gbao and Kailondo were the most senior Commanders in Makeni.[3976] Other witnesses also stated that Gbao was one of the most senior Commanders in Makeni.[3977] There is evidence that Gbao reported to Sesay on the security situation in Magburaka regarding the movement of UNAMSIL peacekeepers.[3978] There is also some evidence of Gbao passing orders to Commanders. On 12 July 2000, Gbao ordered the Overall Brigade Commander Col. Bai Bureh:

> Prepare your manpower for a mission between Mile 91 and the area Col. Komba Gbundema was operating. Your are [sic] to indicate your manpower and arm strenght [sic] so that all can be equiped [sic] with the necessary materials needed for this operation.[3979]

2296. The Chamber moreover recalls that Gbao attended the Makump DDR camp with a group of 30 to 40 armed fighters on 1 May 2000 and that he stated "give me back my five men and their weapons, otherwise I will not move an inch from here."[3980] The Chamber is satisfied that these fighters were under Gbao's command at that point in time.

2297. The foregoing evidence indicates that Gbao was no longer merely a staff Commander who did not participate in military operations or command fighters. However, the Prosecution has not adduced evidence to establish the extent to which Gbao was integrated into the RUF command structure at this point in time nor the effect of his new functions on his ability to control RUF fighters. The fact that Gbao was able to command fighters at the Makump DDR camp on 1 May 2000 does not establish that he possessed the material ability to prevent or punish the RUF perpetrators of the subsequent attacks, who were subordinate to other Commanders including Gbundema, Touray, Kallon and Sesay.

[3976] Transcript of 1 June 2007, Issa Sesay, p. 56.
[3977] Transcript of 27 March 2006, TF1-174, p. 100 (CS); Transcript of 22 April 2008, DMK-161, p. 46.
[3978] Exhibit 212, RUF Radio Log Book, pp. 28024-28025.
[3979] Exhibit 212, RUF Radio Log Book, p. 28101. The Chamber also notes the testimony of TF1-360 that Gbao "had the right to pass direct military orders": Transcript of 26 July 2005, TF1-360, pp. 111-112. The Chamber does not find this statement, in the absence of evidence of orders passed by Gbao which were obeyed, to be sufficient to establish his effective command and control over RUF fighters.
[3980] *Supra* para. 1786.

2298. Having examined the totality of the evidence pertaining to Gbao's command role in May 2000, the Chamber finds that the Prosecution has failed to establish that Gbao was able to exercise effective control over RUF fighters in the Makeni, Magburaka and Kono areas.

2299. The Chamber therefore finds that the Prosecution has failed to prove beyond reasonable doubt that Gbao was in a superior-subordinate relationship with the perpetrators of the twelve attacks directed against UNAMSIL personnel in May 2000 in which he did not directly participate. The Chamber finds Gbao not liable under Article 6(3) of the Statute for these crimes.

VIII. CUMULATIVE CONVICTIONS

1. Applicable Law

2300. The issue of cumulative convictions arises when more than one conviction is imposed for the same criminal conduct. The Chamber is of the view that an accused may only be convicted of multiple criminal convictions that arise under different statutory provisions, but are based on the same conduct, "if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other."[3981] In other words, multiple convictions may only be upheld if both of the provisions require proof of an element that is not required by the other provision.[3982] If an additional element is only required for one of the provisions, then the accused will be convicted on that count, but not on the other count for which no distinct element is required.

2301. In applying this test, the Chamber is mindful that it must be guided by the considerations of justice for the Accused[3983] while still ensuring that the convictions "describe the full culpability of a particular accused or provide a complete picture of his criminal conduct."[3984]

2. Findings on Cumulative Convictions

2.1. Cumulative Convictions on War Crimes and Crimes Against Humanity

2302. The general requirements for each offence must be taken into consideration when applying the test for cumulative convictions.[3985] The general requirements for crimes against

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[3981] *Celebici* Appeal Judgement, para. 412. *See also*: *Prosecutor v. Musema*, ICTR-96-13-A, Judgement (AC), 16 November 2001 [*Musema* Appeal Judgement], paras 361-363; *Naletilic and Martinovic* Appeal Judgement, paras 584-585.

[3982] CDF Appeal Judgement, para. 220.

[3983] *Kunarac et al.* Appeal Judgement, para. 173. *See also* para. 174: "The Appeals Chamber wishes to emphasise that whether the same conduct violates two distinct statutory provisions is a question of law. Nevertheless, the Chamber must take into account the entire situation so as to avoid a mechanical or blind application of its guiding principles."

[3984] *Kunarac et al.* Appeal Judgement, para. 169, citing the Partial Dissenting Opinion of Judge Shahabuddeen in the *Jelisic* Appeal Judgement, para. 34.

[3985] *Kunarac et al.* Appeal Judgement, para 177.

humanity and war crimes as set out in the Applicable Law section above clearly each contain a materially distinct element that does not exist in the other. As a result, the Chamber is satisfied that it is permissible to enter convictions for the same conduct under Article 2 (Crimes against humanity) and Article 3 (Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II).[3986]

2303. Therefore, it is permissible to enter convictions in relation to the same conduct as found under Counts 6, 7 and 8. Similarly, it is permissible to enter convictions in relation to the same conduct under Count 5, 10, 15 and under Counts 4, 11, 16 respectively.

2.2. Cumulative Convictions on separate Crimes Against Humanity

2.2.1. Murder and Extermination

2304. The Chamber considers that is impermissible to convict for both murder and extermination under Count 4 and 3 based on the same conduct.[3987] However, the Chamber finds that it is permissible to convict on both counts if each count is based on *distinct* conduct.[3988]

2.2.2. Rape and Sexual Slavery

2305. The Chamber considers that the crime charged under Count 7 (sexual slavery) requires a distinct element from the crime of rape (Count 6). The offence of rape requires sexual penetration, whereas sexual slavery requires the exercise of powers attaching to the right of ownership and acts of sexual nature. As the acts of a sexual nature do not necessarily require sexual penetration, and rape does not require that the right to ownership is exercised, the Chamber finds that sexual slavery is distinct from rape. Where the commission of sexual slavery, however, entails acts of rape, the Chamber finds that the act of rape is subsumed by the act of sexual slavery. In such a case, a conviction on the same conduct is not permissible for rape and sexual slavery.

[3986] *Kunarac et al.* Appeal Judgement, para. 176, citing *Kupreskic* Appeal Judgement, para. 288 and *Jelisic* Appeal Judgement, para. 82.
[3987] *Ntakirutimana* Appeal Judgement, para. 542.
[3988] AFRC Trial Judgement, para. 2109.

2.2.3. Rape and 'Forced Marriage'

2306. The Chamber considers that the crime charged under Count 8 ('forced marriage') as an other inhumane act requires a distinct element from the crime of rape (Count 6), and *vice versa*. The offence of rape requires sexual penetration, whereas 'forced marriage' requires a forced conjugal association based on exclusivity between the perpetrator and victim.[3989] Therefore, the Chamber finds that it is permissible to convict on both counts.

2.2.4. Sexual Slavery and 'Forced Marriage'

2307. The Chamber considers that the conduct charged under Count 8 is distinct from the charges of sexual slavery under Count 7 (sexual slavery). The Appeals Chamber has explicitly held that 'forced marriage' is not subsumed by sexual slavery.[3990] The distinct elements are a forced conjugal association based on exclusivity between the perpetrator and victim.[3991] Therefore a conviction on both Counts 7 (sexual slavery) and 8 (other inhumane acts) is permissible.

2.3. Cumulative Convictions on separate War Crimes

2308. The Appeals Chamber in CDF has held that the "crime of collective punishments requires proof of an intention to punish collectively",[3992] which is not required by the crimes of murder and pillage, and that murder and pillage require materially distinct elements from the crime of collective punishments, as murder requires the death of the victim and pillage requires proof of appropriation, which collective punishments does not.[3993] The Appeals Chamber in CDF therefore held that it is permissible to enter a conviction for collective punishments in addition to murder and pillage.[3994] Similarly, the Chamber finds that murder and pillage contain elements that are not required by the crime of acts of terrorism.

2309. The Chamber also finds that the crime of acts of terrorism contains a materially distinct element from the war crimes of murder, mutilation, outrages upon personal dignity, and pillage, as it requires proof of an intent to terrorise, which these other crimes do not.

[3989] *AFRC* Appeal Judgement, para. 195.
[3990] *AFRC* Appeal Judgement, para. 195.
[3991] *AFRC* Appeal Judgement, para. 195.
[3992] *CDF* Appeal Judgement, para. 225.
[3993] *CDF* Appeal Judgement, para. 225.

Moreover, mutilation requires the permanent disfigurement or disabling of the victim, and outrages on personal dignity requires the humiliation, degradation or violation of the dignity of the victim, which the crimes of collective punishments and acts of terrorism do not.

2310. The Chamber therefore finds that it is permissible to convict an accused under Counts 1 and 2, as well as for the underlying crimes charged in Count 5 and 10 (murder and mutilation), Count 9 (outrages upon personal dignity) and Count 14 (pillage).

2.4. Cumulative Convictions on separate Modes of Liability

2311. In relation to concurrent convictions under separate modes of liability, the Chamber finds that it is not appropriate to convict under both Article 6(1) and Article 6(3) of the Statute. Where responsibility under both headings of Article 6(1) and Article 6(3) of the Statute are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a conviction should only be entered on the basis of Article 6(1) of the Statute only. The superior position of an accused may however be considered as an aggravating factor in sentencing.[3995]

2312. However, the Chamber notes that the ICTY Appeals Chamber has held that concurrent convictions pursuant to Article 7(1) and Article 7(3) of the ICTY Statute in relation to the same count are only prohibited if they are based on *the same facts*,[3996] and that the *Blaskic* principle "does not bar simultaneous convictions under Articles 7(1) and 7(3) of the Statute if they are based on different conduct".[3997] The Appeals Chamber in AFRC has further clarified

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[3994] CDF Appeal Judgement, para. 225.

[3995] *Blaskic* Appeal Judgement, para. 91; *Kordic and Cerkez* Appeal Judgement, paras. 34-35; *Kajelijeli* Appeal Judgement, para. 81.

[3996] *Blaskic* Appeal Judgement, para. 92; *Kordic and Cerkez* Appeal Judgement, para. 35. The Chamber also notes that Krnojelac was convicted in relation to one count "both for his individual responsibility and as a superior". *Krnojelac* Trial Judgement, para. 354. The Trial Chamber noted in a footnote the distinct sets of conduct for which he was convicted under each mode of liability. *Krnojelac* Trial Judgement, fn. 1590. This aspect of the Trial Judgement was not disturbed on Appeal, and the Appeals Chamber also found Krnojelac guilt in relation to the same count under both Article 7(1) and Article 7(3) of the ICTY Statute. *Krnojelac* Appeal Judgement, p. 114.

[3997] *Prosecutor v. Miodrag Jokic*, IT-01-42/1-A, Judgement on Sentencing Appeal, 30 August 2005, para. 25. The Appeals Chamber suggests that if Jokic had been convicted in relation to the same count under Article 7(1) and Article 7(3) of the ICTY Statute for "two distinct sets of actions and omissions", this would not have constituted a legal error. The Chamber further notes that generally at the ICTY and ICTR, each count in the Indictment charges the accused with a single incident at a particular location. However, in the present case, each count in the Indictment charges the Accused with multiple incidents occurring in multiple locations, which makes it more likely that convictions might be entered under Article 6(1) and Article 6(3) in relation to the same count for different sets of conduct.

that "where the accused is charged for multiple instances of an offence under a single Count pursuant to both Article 6(1) and 6(3), and one or more is proved beyond reasonable, then a compound conviction should be entered against the Accused".[3998]

2313. The Chamber therefore finds that convictions may be entered under Article 6(1) and 6(3) of the Statute in relation to the same count if the convictions under each mode of liability are based on different sets of conduct.

[3998] *AFRC* Appeal Judgement, para. 215. The Appeals Chamber goes even further to hold that in such cases, it constitutes a legal error for the Trial Chamber not to enter a compound conviction.

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IX. DISPOSITION

1. Sesay

FOR THE FOREGOING REASONS, having considered all the evidence adduced in this trial together with the submissions of the Parties, the Chamber finds with respect to the Accused, **Issa Hassan Sesay**, as follows:

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: **GUILTY**, of committing Acts of Terrorism by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, for crimes set forth in Counts 3 to 11 and Count 13, as set out below, in relation to events in Tikonko, Gerihun and Sembehun in Bo District; Kenema Town and Tongo Field in Kenema District; in Koidu Town, Tombodu, Yardu, Penduma, Bumpeh, Bomboafuidu, Sawao, Wendedu and Kayima in Kono District; and in Kailahun Town in Kailahun District;

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: **GUILTY**, of committing Collective Punishments by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, for crimes set forth in Counts 3 to 5 and Counts 10 to 11, as set out below, in relation to events in Kenema Town in Kenema District; Tombodu, Penduma and Yardu in Kono District, and Kailahun Town in Kailahun District;

Count 3: Extermination, a Crime Against Humanity, punishable under Article 2(b) of the Statute: **GUILTY**, of committing Extermination by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tikonko in Bo District; Tongo Field in Kenema District; Tombodu and Koidu Town in Kono District; and Kailahun Town in Kailahun District;

Count 4: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute: **GUILTY**, of committing Murder by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tikonko, Sembehun and Gerihun in Bo

District; Kenema Town and Tongo Field in Kenema District; in Koidu Town, Tombodu, Penduma and Yardu in Kono District; and in Kailahun Town in Kailahun District;

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: **GUILTY**, of committing Murder by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tikonko, Sembehun and Gerihun in Bo District; in Kenema Town and Tongo Field in Kenema District; in Koidu Town, Tombodu, Penduma and Yardu in Kono District; and in Kailahun Town in Kailahun District;

Count 6: Rape, a Crime Against Humanity, punishable under Article 2(g) of the Statute: **GUILTY**, of committing Rape by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town, Bumpeh, Tombodu, Penduma, Bomboafuidu, Sawao and Wendedu in Kono District;

Count 7: Sexual slavery, a Crime Against Humanity, punishable under Article 2(g) of the Statute: **GUILTY**, of committing Sexual Slavery by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town and Wendedu in Kono District and in locations in Kailahun District;

Count 8: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute: **GUILTY**, of committing other inhumane acts (forced marriage) by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town and Wendedu in Kono District and in locations in Kailahun District;

Count 9: 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: **GUILTY**, of committing outrages against personal dignity by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town, Bumpeh, Tombodu, Penduma, Bomboafuidu, Sawao and Wendedu in Kono District and in locations in Kailahun District;

Count 10: 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: **GUILTY**, of committing mutilations by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tombodu, Wendedu, Penduma, Yardu, Kayima and Sawao in Kono District;

Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute: **GUILTY**, of committing other inhumane acts (physical violence) by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Kenema Town in Kenema District; and in Tombodu, Wendedu, Penduma, Yardu, Kayima, and Sawao in Kono District;

Count 12: 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: **GUILTY**, of planning the use of children to actively participate in hostilities, pursuant to Article 6(1) of the Statute in relation to events in Kenema, Kailahun, Kono and Bombali Districts;

Count 13: Enslavement, a Crime Against Humanity, punishable under Article 2(c) of the Statute: **GUILTY,** of committing Enslavement by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tongo Field in Kenema District; in Kono District; and in Kailahun District; of planning Enslavement pursuant to Article 6(1) of the Statute in relation to events in Tombodu and throughout Kono District; and pursuant to Article 6(3) of the Statute in relation to events in Yengema in Kono District;[3999]

Count 14: Pillage, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute: **GUILTY**, of committing Pillage by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in

[3999] In this, and in other counts, the Accused have been convicted under both Article 6(1) and Article 6(3) of the Statute in relation to the same count. However, the Chamber notes that in each such case, the conduct for which the Accused have been held liable under Article 6(1) is distinct from that for which they been held liable under Article 6(3). As noted previously in the Cumulative Convictions Section, the Chamber considers that convictions may be entered under Article 6(1) and 6(3) in relation to the same count if the convictions under each mode of liability are based on different sets of conduct: *supra* para. 2313. In cases in which the Accused have been convicted under both Article 6(1) and Article 6(3) in relation to the same count, the Chamber has clearly specified the incidents for which they have been held liable under each mode of liability.

relation to events in Sembehun in Bo District; and in Koidu Town and Tombodu in Kono District;

Count 15: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, an Other Serious Violation of International Humanitarian Law, punishable under Article 4(b) of the Statute: **GUILTY**, of intentionally directing attacks against the UNAMSIL peacekeeping mission pursuant to Article 6(3) of the Statute, in relation to events in Bombali, Port Loko, Kono and Tonkolili Districts;

Count 16: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute: **NOT GUILTY;**

Count 17: 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: **GUILTY**, of Murder pursuant to Article 6(3) of the Statute in relation to events in Bombali and Tonkolili Districts; and

Count 18: 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: **NOT GUILTY**.

2. Kallon

WITH RESPECT to the Accused **Morris Kallon**, having considered all the evidence along with the arguments of the Parties, the Chamber finds as follows:

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: **GUILTY**, of committing Acts of Terrorism by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, for crimes set forth in Counts 3-11 and Count 13, as set out below, in relation to events in Tikonko, Sembehun and Gerihun in Bo District; Kenema Town and Tongo Field in Kenema District; Koidu Town, Tombodu, Yardu, Penduma, Bumpeh,

Bomboafuidu, Sawao, Wendedu and Kayima in Kono District; and in Kailahun Town in Kailahun District; and pursuant to Article 6(3) of the Statute for a crime under Count 7 in Kissi Town in Kono District;

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: **GUILTY**, of committing Collective Punishments by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, for crimes set forth in Counts 3 to 5 and Counts 10 to 11 as set out below in relation to events in Kenema Town in Kenema District, Tombodu, Penduma and Yardu in Kono District, and Kailahun Town in Kailahun District;

Count 3: Extermination, a Crime Against Humanity, punishable under Article 2(b) of the Statute, **GUILTY**, of committing Extermination by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tikonko in Bo District; in Tongo Field in Kenema District; in Tombodu and Koidu Town in Kono District; and in Kailahun Town in Kailahun District;

Count 4: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute: **GUILTY,** of committing Murder by participating in a joint criminal enterprise, pursuant to Article 6(1), in relation to events in Tikonko, Sembehun and Gerihun in Bo District; Kenema Town and Tongo Field in Kenema District; in Koidu Town, Tombodu, Penduma and Yardu in Kono District; and in Kailahun Town in Kailahun District; and of instigating Murder pursuant to Article 6(1) in relation to an event in Wendedu in Kono District;

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: **GUILTY**, of committing Murder by participating in a joint criminal enterprise pursuant to Article 6(1) of the Statute in relation to events in Tikonko, Sembehun and Gerihun in Bo District; in Kenema Town and Tongo Field in Kenema District; in Koidu Town, Tombodu, Penduma and Yardu in Kono District; and in Kailahun Town in Kailahun District; of instigating Murder, pursuant to Article 6(1) of the Statute, in relation to an event in Wendedu in Kono District;

Count 6: Rape, a Crime Against Humanity, punishable under Article 2(g) of the Statute: **GUILTY**, of committing Rape by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town, Bumpeh, Tombodu, Penduma, Bomboafuidu, Sawao and Wendedu in Kono District;

Count 7: Sexual slavery, a Crime Against Humanity, punishable under Article 2(g) of the Statute: **GUILTY**, of committing Sexual Slavery by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town and Wendedu in Kono District and locations in Kailahun District; and pursuant to Article 6(3) of the Statute in relation to an event in Kissi Town in Kono District;

Count 8: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute: **GUILTY**, of committing other inhumane acts (forced marriage) by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town and Wendedu in Kono District and locations in Kailahun District; and pursuant to Article 6(3) of the Statute in relation to an event in Kissi Town in Kono District;

Count 9: 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: **GUILTY**, of committing outrages against personal dignity pursuant to Article 6(1) of the Statute by participating in a joint criminal enterprise in relation to events in Koidu Town, Bumpeh, Tombodu, Penduma, Bomboafuidu, Sawao and Wendedu in Kono District and in locations in Kailahun District; and pursuant to Article 6(3) of the Statute in relation to an event in Kissi Town in Kono District;

Count 10: 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: **GUILTY**, of committing mutilations by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tombodu, Wendedu, Penduma, Yardu, Kayima and Sawao in Kono District;

Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute: **GUILTY**, of other inhumane acts (physical violence) by participating in a joint

criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Kenema Town in Kenema District; in Tombodu, Wendedu, Penduma, Yardu, Kayima and Sawao in Kono District;

Count 12: 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: **GUILTY**, of planning the use of children under the age of 15 years to actively participate in hostilities pursuant to Article 6(1) of the Statute in relation to events in Kenema, Kailahun, Kono and Bombali Districts;

Count 13: Enslavement, a Crime Against Humanity, punishable under Article 2(c) of the Statute: **GUILTY,** of committing Enslavement by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tongo Field in Kenema District; in Kono District; and in Kailahun District; and pursuant to Article 6(3) in relation to events throughout Kono District;

Count 14: Pillage, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute: **GUILTY**, of Pillage, by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Sembehun in Bo District; and Koidu Town and Tombodu in Kono District;

Count 15: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, an Other Serious Violation of International Humanitarian Law, punishable under Article 4(b) of the Statute: **GUILTY**, of committing and ordering attacks on peacekeepers pursuant to Article 6(1) in Bombali District; and pursuant to Article 6(3) of the Statute in relation to events committed in Bombali, Port Loko, Kono and Tonkolili Districts;

Count 16: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute: **NOT GUILTY;**

Count 17: 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: **GUILTY**, of Murder pursuant to Article 6(3) of the Statute in relation to events in Bombali and Tonkolili Districts; and

Count 18: 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: **NOT GUILTY**.

3. Gbao

WITH RESPECT to the Accused **Augustine Gbao**, having considered all the evidence along with the arguments of the Parties, the Chamber finds as follows:

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: **GUILTY**, *Justice Boutet dissenting*, of committing Acts of Terrorism by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, for crimes set forth in Counts 3 to 5 and Counts 6 to 9, as set out below, in relation to events in Kailahun Town and throughout Kailahun District;

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: **GUILTY**, *Justice Boutet dissenting*, of committing Collective Punishments by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, for crimes set forth in Counts 3 to 5, as set out below, in relation to events in Kailahun Town in Kailahun District;

Count 3: Extermination, a Crime Against Humanity, punishable under Article 2(b) of the Statute,: **GUILTY**, *Justice Boutet Dissenting*, of committing Extermination by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tikonko in Bo District; in Tongo Field in Kenema District; in Tombodu and Koidu Town in Kono District; and in Kailahun Town in Kailahun District;

Count 4: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute: **GUILTY**, *Justice Boutet dissenting*, of committing Murder by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tikonko, Sembehun and Gerihun in Bo District; Kenema Town and Tongo Field in Kenema District; in Koidu

Town, Tombodu, Penduma and Yardu in Kono District; and in Kailahun Town in Kailahun District;

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: **GUILTY**, *Justice Boutet dissenting*, of committing Murder by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tikonko, Sembehun and Gerihun in Bo District; Kenema Town and Tongo Field in Kenema District; Koidu Town, Tombodu, Penduma and Yardu in Kono District; and in Kailahun Town in Kailahun District;

Count 6: Rape, a Crime Against Humanity, punishable under Article 2(g) of the Statute: **GUILTY**, *Justice Boutet dissenting*, of committing Rape by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town, Bumpeh, Tombodu, Penduma, Bomboafuidu, Sawao and Wendedu in Kono District;

Count 7: Sexual slavery, a Crime Against Humanity, punishable under Article 2(g) of the Statute: **GUILTY**, *Justice Boutet dissenting*, of committing Sexual Slavery by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town and Wendedu in Kono District and locations in Kailahun District;

Count 8: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute: **GUILTY**, *Justice Boutet dissenting*, of committing other inhumane acts by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town and Wendedu in Kono District and locations in Kailahun District;

Count 9: 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: **GUILTY**, *Justice Boutet dissenting*, of committing outrages against personal dignity by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Koidu Town, Bumpeh, Tombodu, Penduma, Bomboafuidu, Sawao and Wendedu in Kono District and in locations in Kailahun District;

Count 10: 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: **GUILTY**, *Justice Boutet dissenting*, of committing mutilations by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tombodu, Wendedu, Penduma, Yardu, Kayima and Sawao in Kono District;

Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute: **GUILTY**, *Justice Boutet dissenting*, of other inhumane acts (physical violence) pursuant to Article 6(1) of the Statute in relation to events in Kenema Town in Kenema District; and in Tombodu, Wendedu, Penduma, Yardu, Kayima and Sawao in Kono District;

Count 12: 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: **NOT GUILTY;**

Count 13: Enslavement, a Crime Against Humanity, punishable under Article 2(c) of the Statute: **GUILTY,** *Justice Boutet dissenting*, of committing Enslavement by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, in relation to events in Tongo Field in Kenema District; in Kono District; and in Kailahun District;

Count 14: Pillage, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute: **GUILTY**, *Justice Boutet dissenting*, of committing Pillage pursuant to Article 6(1) of the Statute in relation to events in Sembehun in Bo District; and Koidu Town and Tombodu in Kono District;

Count 15: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, an Other Serious Violation of International Humanitarian Law, punishable under Article 4(b) of the Statute: **GUILTY**, of aiding and abetting attacks on peacekeepers pursuant to Article 6(1) in Bombali District;

Count 16: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute: **NOT GUILTY;**

Count 17: 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: **NOT GUILTY;**

Count 18: 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: **NOT GUILTY.**

Hon. Justice Pierre G. Boutet appends a partly Dissenting Opinion to the Judgement.

Hon. Justice Bankole Thompson appends a Separate Concurring Opinion to the Judgement.

Delivered on 25 February 2009 in Freetown, Sierra Leone.

Hon. Justice Benjamin Mutanga Itoe

Hon. Justice Pierre G. Boutet

Hon. Justice Bankole Thompson

Presiding Judge
Trial Chamber I

[Seal of the Special Court for Sierra Leone]

X. DISSENTING OPINION OF JUSTICE PIERRE G. BOUTET

1. The Chamber, by a majority, has found that the Accused Gbao, together with Sesay, Kallon and other RUF members, participated in the joint criminal enterprise between the RUF and the AFRC and that his participation was significant during both the Junta period from 25 May 1997 to 14 February 1998 and during the ensuing period of 14 February 1998 until late April 1998 when the AFRC forces then broke away from the RUF. It is my understanding that the majority concluded that the ideology of the RUF propagated, facilitated and was instrumental to the commission of crimes by members of the joint criminal enterprise. In the opinion of the majority, Gbao's significant contribution to the joint criminal enterprise is founded on his role as an RUF ideology instructor and his commitment to spreading and implementing that ideology.[1] The majority further suggests that the "ideology was the revolution in action."[2] I respectfully dissent from these findings for the reasons further discussed hereafter.

1. Allegations in the Indictment

2. The Prosecution has particularised Gbao's responsibility and role in the Indictment, by alleging[3] that between November 1996 and until mid-1998 Gbao was a senior RUF Commander in control of the area of Kailahun Town, Kailahun District.[4] In this position, between November 1996 and about April 1997, it is alleged that he was subordinate only to the Battle Group Commander, the Battle Field Commander and Foday Sankoh; and that, between April 1997 and mid-1998, Gbao was subordinate only to the Battle Field Commander, Foday Sankoh and Johnny Paul Koroma.[5]

3. It is further alleged that Gbao was Overall Security Commander in the AFRC/RUF forces between mid-1998 and about January 2002. In this position, it is alleged that Gbao was in command of all Intelligence and Security Units of the AFRC/RUF and subordinate only to

[1] See paras 2014-2015 of the Judgement.
[2] See para. 2032 of the Judgement.
[3] Indictment, paras 30-34.
[4] Indictment, para. 31.
[5] Indictment, para. 31.

Foday Sankoh and Johnny Paul Koroma.[6] It is further alleged that Gbao was also the joint Commander of the AFRC/RUF forces in the Makeni Area in Bombali District between about March 1999 and January 2002, and in this capacity he was subordinate only to the Battle Field Commander, Foday Sankoh and Johnny Paul Koroma.[7] By and large, it is the Prosecution's claim that throughout the periods covered by the Indictment Gbao, together with the other accused and senior members of the AFRC and RUF, was in a position to exercise authority, command and control over all subordinate members of the AFRC and RUF.[8] Through these positions, Gbao would have been a central or important figure in the joint criminal enterprise that the Prosecution alleges to have existed.

4. I share the view expressed by one of my esteemed colleague Justice Thompson that the Indictment is the "road map"[9] to the case against the Accused; it is designed to show the direction the Prosecution intends to follow when presenting its case and allows an accused person, in this case the Accused Gbao, to know the case that he has to defend against. The allegations against Gbao are that, as OSC and high-ranking member of the RUF, he was in a "command position" and played a "significant" role within the Junta period and the period following May 1998 in order to pursue the objectives of the joint criminal enterprise. I find that the evidence adduced during the trial does not allow for such a conclusion.

2. The RUF Ideology as Significant Contribution to the JCE

5. Over the course of this four year trial, it was never the Prosecution's case that the revolutionary ideology of the RUF advocated the commission of crimes in order to achieve the goal of taking power and control over Sierra Leone, nor did the Prosecution argue that Gbao played a vital role in putting this criminal ideology into practice. In fact, the Gbao Defence submitted that the RUF ideology prohibited criminal behaviour, that Gbao believed strongly in this aspect of the ideology and strove to implement it by preventing and punishing crimes where he was able to do so. I, like my learned colleagues, do not accept this defence. The general conduct of the RUF throughout the Indictment period as we have found it did not

[6] Indictment, para. 32.
[7] Indictment, para. 33.
[8] Indictment, para. 34.
[9] Transcript of 7 November 2005, p. 20.

portray this principle of its ideology. Quite the opposite, I should state. Moreover, I note that Gbao only was an ideology instructor in 1995, before the jurisdiction of the Special Court.[10] There is lack of evidence to support the conclusion that he was instructing recruits after he assumed his Role as IDU in 1996. In addition, the Prosecution has not proved that the perpetrators of the crimes received ideology training or were instructed by Gbao himself.

6. In my opinion, however, it would not be in accordance with Gbao's right to a fair trial to centre his liability on a concept of joint criminal enterprise based upon an interpretation of the evidence that was not advanced by the Prosecution as part of their pleadings. I find that Gbao did not receive adequate and sufficient notice of this interpretation at any time. A fundamental right of an accused person, guaranteed by the Statute pursuant to Article 17(4)(a), is the right to know the case against him and to be able to prepare his defence effectively. With the greatest respect for the contrary opinion of the majority, it is my view that Gbao did not have the opportunity to defend himself against the allegation that his commitment to the RUF ideology and his role in propagating that ideology constituted, in the circumstances, a significant contribution by Gbao to the joint criminal enterprise.

7. The majority opinion also stresses Gbao's role as the Overall Security Commander ("OSC") during the Junta period and between the time of the Intervention in mid-February 1998 and the time that the AFRC members of the joint criminal enterprise broke away from the RUF in May 1998. Although I accept that Gbao's *de jure* position as OSC was important in Kailahun District, it is insufficient in my opinion to conclude that he participated in and therefore made a significant contribution to the joint criminal enterprise. No evidence was put forth by the Prosecution to demonstrate that the OSC played any significant role, or that this was a position of such authority so as to allow such proper inferences to be drawn regarding the nature and extent of Gbao's contribution to the joint criminal enterprise.

8. In my opinion, there is insufficient evidence as to any acts or actions by Gbao in his role as OSC during that period of time that could amount to a significant contribution to the joint criminal enterprise. There is an absence of evidence which could establish that Gbao

[10] Transcript of 9 June 2008, DAG-080, p. 87; Transcript of 6 June 2008, DAG-080, pp. 25, 13; Transcript of 1 November 2007, DIS-188, p. 26.

actually received reports of crimes in Kenema or Bo Districts during the Junta period,[11] or that he had any *de facto* responsibility for investigating criminal acts outside of Kailahun District during this time. Moreover, there is no evidence that Gbao received any reports or had any responsibility for investigating or punishing crimes committed during the retreat following the Intervention, or in Kono District between 14 February 1998 and the end of April 1998. I find that there is, in fact, a complete absence of evidence that would tend to prove the manner in which the internal security apparatus of the RUF may have interacted with, supported or complemented the internal structures of the AFRC or of the Junta. Given the chaotic nature of the retreat, the breakdown in discipline in the ranks of the RUF and AFRC forces, and the creation of a new, joint AFRC/RUF command structure in Kono District, I am not convinced that the evidence establishes beyond reasonable doubt that Gbao either participated in and/or made a significant contribution to the achievement of the goals of the joint criminal enterprise through his role as OSC.

3. Other Conduct as Significant Contribution to the JCE

9. The Chamber has heard evidence that Gbao participated in a single Joint Security Board of Investigation, set up in Kailahun Town to investigate 64 suspected Kamajors shortly after the Intervention.[12] I find it significant that the first group of civilians who were suspected of being Kamajors investigated by a JSBI led by Gbao were released. The JSBI investigation into the second group, again led by Gbao, was on-going when Bockarie intervened and ordered that these alleged Kamajors be executed, personally executing three suspects and ordering his bodyguards to execute the remaining detainees.

10. Gbao's presence at the crime scene is not sufficient to infer that he significantly contributed to, or aided and abetted, this horrendous mass execution. It is accepted in the jurisprudence that the *actus reus* of aiding and abetting requires an act or an omission specifically directed to assist, encourage or lend moral support to the perpetration of a specific crime. I concur with my colleagues that Gbao's position as a Vanguard and as OSC, as well as his relationship with Sankoh, commanded respect and prestige.

[11] Or from other parts of Sierra Leone.
[12] See the Factual and Legal Findings Chapter on Kailahun District.

11. The jurisprudence requires, however, that this act or omission of the aider and abettor must have a substantial effect upon the perpetration of the crime.[13] Given the order of Bockarie, the *de facto* leader of the RUF at that time, it is in my respectful opinion doubtful that the presence of Gbao in a large crowd with many other persons during the killing lent moral support to the fact of obedience of Bockarie's orders by his bodyguards and other RUF fighters. In addition, the court has heard that Gbao was not well respected by Bockarie and his bodyguards as he initiated investigations against them for a rape.[14] Furthermore, given that the specific order was issued by Bockarie, it is difficult to infer that Gbao intended to facilitate the killings, particularly in the absence of any convincing evidence. In addition, the evidence adduced does not prove that the perpetrators of the killing exhibited any awareness that Gbao encouraged them to carry out these killings through his inaction.[15]

12. In my opinion, there is reasonable doubt as to whether Gbao intended to contribute to a common design between the RUF and the AFRC, which necessarily contemplated the commission of crimes within the Statute in order to achieve power and control over the territory of Sierra Leone.

13. According to the evidence, Gbao's actions were and continued to be essentially limited to Kailahun District. There is no evidence to suggest that, at any time during the Junta period and during the Intervention, Gbao was involved with the commission of crimes outside of Kailahun District. We may infer, given the relationship between the AFRC and the RUF during the Junta period, that their cooperation included Kailahun District, but to what extent is unknown. According to the evidence, I cannot conclude that, during this period, the operations of the OSC extended beyond Kailahun District. Indeed, the evidence shows that while in Kailahun District security organisations continued to operate as before, in other districts, such as Kenema, new joint structures were established in which AFRC and RUF members were integrated. Only in Kailahun District were MPs and civil security acting as the police and exerting investigative functions of criminal incidents.

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[13] See paras 276-277 of the Judgement.
[14] Transcript of 3 June 2008, DAG-048, p. 48; Transcript of 9 June 2008, DAG-101, p. 120; Transcript of 1 June 2007, p. 14.
[15] *See also Brdjanin* Trial Judgement, paras 477-479, confirmed in *Brdjanin* Appeal Judgement paras 487-495.

14. The majority also finds that Gbao made a significant contribution to the joint criminal enterprise by organising agricultural production for the RUF in Kailahun District from 25 May 1997 until April 1998. In their efforts, the RUF used forced civilian labour, including enslaved civilians to perform multiple agricultural tasks. I find that there is only a limited relationship between the enslavement of civilians in Kailahun District and the furtherance of the goals of the joint criminal enterprise during the period of the Junta Government. In my opinion there is insufficient evidence to conclude that the only reasonable inference to be drawn is that the enslavement of civilians in Kailahun District was directed to achieving the goals of the joint criminal enterprise. This is especially so when compared with the forced mining in Tongo Field, which I agree was done to directly finance and contribute to the joint criminal enterprise.

15. There is some evidence that the food produced in Kailahun District after the Intervention was used in Kono District. There is also some evidence that civilians were used to carry goods back and forth between Kono District and Kailahun District at this time. In my view, the Chamber has only heard general evidence regarding Gbao's involvement in these activities. Based on the evidence, I am not satisfied, beyond reasonable doubt, that Gbao's acts were directed to making a significant contribution to the common purpose of taking power and control over the territory of Sierra Leone.

4. Difficulties in relation to the broad pleading of JCE

16. In such a broadly pleaded joint criminal enterprise, it is necessary, in my opinion, to require a close connection between the goals of the common design, as pleaded, and the contribution of each of the Accused. This is even more important when the purpose is such that it is not even reflective of a crime which would fall under the jurisdiction of this Court. If, as it has been found, ideology is the basis on which the purpose is constructed, Gbao cannot *per se* be deemed to have been involved in the commission of the crimes. Otherwise, respectfully, I find that criminal liability may be attributed expansively and inappropriately.

17. In my view, Gbao should not be liable for the crimes committed by RUF and AFRC fighters in order to take control of the country and its diamond mining areas, over a period of approximately one year and in several areas of the country, simply because he organised forced

civilian labour in an area well behind the frontlines and which had long been controlled by the RUF. Given the size and scope of the present case, I am of the opinion that a narrower interpretation of the concept of "significant contribution" should be taken – one which ties the acts of the Accused directly to the furtherance of the common purpose of the RUF and the AFRC; and one where a nexus is established beyond reasonable doubt between the conduct of the Accused and the furtherance of the common purpose.

18. I note, however, that had the Prosecution pleaded a joint criminal enterprise involving only members of the RUF, or had the Prosecution correctly pleaded the systemic form of joint criminal enterprise, my conclusion regarding Gbao's liability under the concept of joint criminal enterprise may have been different.

5. Gbao's Responsibility for Planning Forced Labour

19. Though I have found that Gbao is not liable for crimes committed under the concept of joint criminal enterprise, I am satisfied beyond reasonable doubt that the evidence demonstrates that Gbao designed and implemented a system of agricultural production and load-carrying in Kailahun District between 25 May 1997 and late April 1998 which relied on the enslavement of civilians in order to supply provisions for the RUF. I am also satisfied that Gbao's role substantially contributed to ensuring the forced labour of civilians and that he intended that those civilians be enslaved or that he was aware of a substantial likelihood that civilians would be enslaved in agricultural production and the carrying of loads. I am also satisfied that Gbao used his position to compel the G5 to provide him with forced civilian labour or the products thereof. I am also satisfied that the evidence demonstrates a nexus between Gbao's directions and the enslavement of civilians to produce agricultural goods or carry loads for the RUF. Finally, I am satisfied that Gbao gave such orders intending that civilians would be enslaved in order to carry them out. Therefore, I hold pursuant to Article 6(1) of the Statute that Gbao planned the enslavement of civilians in Kailahun District between 25 May 1997 and late April 1998.

6. Gbao's Superior Responsibility

20. The Prosecution alleges Gbao's command of "all Intelligence and Security units within the AFRC/RUF forces."[16] However, the Prosecution has not established beyond reasonable doubt that Gbao was in a superior-subordinate relationship with RUF fighters in Kailahun District throughout the period from November 1996 to September 2000. Indeed, the evidence shows that Gbao was not in such a relationship. Gbao was transferred to Makeni, in Bombali District in March 1999 and remained there even after September 2000.

21. Although Gbao was a Vanguard and a senior RUF Commander, Gbao's authority pertained to the discipline and to the interaction between the RUF and civilians. I recall that we found that Gbao was not part of the *de jure* operational chain of command, was not part of the "High Command" and was outranked by Brigade and Area Commanders in the RUF organisation.[17] Even as Overall Security Commander, Gbao did not have *de jure* command or control over the agents in the security units other than the IDU, of which he was the Overall Commander.[18] He would supervise these units, receive their reports, but he did not exercise control over these persons or units. It is found that at no time during the period ending in March 1999 did Gbao exercise effective control over subordinate RUF members.

22. Similarly, I note that Gbao's powers as Overall Security Commander did not generally extend to commencing investigations or enforcing punishments on his own initiative. The evidence shows that Gbao for the period of May 1996 to January 2000 did not possess the authority to discipline troops or give them orders. Rather, it is my view that while Gbao had the authority to report the fighters' behaviour, he did not have the authority to take any punitive action for serious misdemeanors. The evidence shows that his role and authority may have changed in Makeni in 2000, but I find that there is no evidence beyond reasonable doubt that such a situation existed before that period of time.

7. Conclusion

23. For the foregoing reasons, I find that:

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[16] Indictment, para 32.
[17] Transcript of 31 May 2007, Issa Sesay, p. 34. *See also* Transcript of 3 June 2008, DAG-048, pp. 47-48.

(i) Gbao did not participate in the joint criminal enterprise; furthermore

(ii) Gbao did not provide a significant contribution to the joint criminal enterprise,

(iii) Gbao is individually responsible for the planning of enslavement in Kailahun District, as charged under Count 13 of the Indictment; and

(iv) Gbao is not liable under Article 6(1) or 6(3) for the killing of the Kamajors in Kailahun Town.

24. I concur with the majority opinion on other findings. In an abundance of caution, I also wish to indicate very clearly that I find that there is evidence beyond reasonable doubt of Gbao's responsibility in relation to aiding and abetting the attacks against peacekeepers, as charged in Count 15 of the Indictment and, in this respect, I concur entirely with the findings of the majority.

Delivered on 25 February 2009 in Freetown, Sierra Leone.

Hon. Justice Pierre G. Boutet
Presiding Judge
Trial Chamber I

[Seal of the Special Court for Sierra Leone]

[18] Transcript of 3 June 2008, DAG-048, p. 129.

XI. SEPARATE CONCURRING OPINION OF JUSTICE BANKOLE THOMPSON FILED PURSUANT TO ARTICLE 18 OF THE STATUTE

1. Introduction

1. Consistent with the letter and spirit of the Statute of the Special Court for Sierra Leone providing for the judicial option to file either concurring or dissenting opinions to the Judgment of the Court, I, Hon. Justice Bankole Thompson, do hereby append to the Main Judgment of this Trial Chamber in this case a Separate Concurring Opinion.

2. The rationale behind this Opinion is primarily to reinforce with further clarity and precision the expositions on various aspects of the law applicable to the facts of this case and, in general or in specific terms, where appropriate and necessary, the judicial reasoning and analyses of certain selected issues of either law or mixed law and fact considered and disposed of in the Main Judgment. Hence, nothing contained in the Opinion is meant to detract or derogate from the main thrust of both the procedural and substantive aspects of the Main Judgment. Again, I aver that nothing stated in this Opinion is inconsistent with my judicial position on the verdicts in respect of the Counts charged in the Indictment.

2. Alleged Defects of Lack of Specificity in the Form of the Indictment: The Controlling Principle

3. The first issue I address is that of alleged defects in the form of the Indictment. It is comprehensive in dimension. It may be recalled that all the Defence Teams allege, in their Final Trial Briefs and reinforced in their Oral Presentations, several major procedural defects relating to the form of the Indictment. Having regard to the gravamen of the alleged defects, namely, lack of specificity, vagueness and uncertainty in the pleadings, it seems to me that the Chamber, in determining the merits or otherwise of the alleged defects or irregularities, is confronted again with the task of defining, with judicial perspicacity, the delicate and complex borderline in law between the legal requirement for pleading *material facts* and that of the legal prohibition against pleading *evidence* in an Indictment whether or not such Indictment alleges crimes against humanity, war crimes or related grave violations of international humanitarian law. This is a borderline not always easy to delimit or demarcate especially in domestic systems

of law based on the common law tradition. *In my considered view, the controlling principle is that there is no requirement to plead evidence in an Indictment whether in the context of domestic criminality or international criminality.* It is an exclusionary rule with critical implications for the form of an Indictment in terms of conformity with the principle of legality in the criminal adjudicating process.

4. Concurring in the Main Judgment, and taking the analysis a stage further, I opine that the existing state of international case-law authorities on the subject of alleged defects in the form of an Indictment, as to the specific requirement of pleading material facts with much specificity and particularity turns on the articulation and application of the distinction as to whether the impugned Indictment charges the accused with crimes proscribed under domestic or national law or with crimes proscribed by international law. This is crucial.

5. Hence, consistent with the Main Judgment, I emphasise that the *ratio* of this Chamber's seminal Decision[1] on this issue is that where the allegations relate to ordinary or conventional crimes within the setting of domestic or national criminality, the degree of specificity required for pleading the Indictment may be much greater than it would be where the allegations relate to unconventional or extraordinary crimes, for instance, mass killings, mass rapes and wanton and widespread destruction of property (in the context of crimes against humanity and grave violations of international humanitarian law) within the setting of international law.[2] It is my view that any judicial discretion to effect some wholesale jurisprudential transplantation of the rules governing pleadings in an Indictment in the context of domestic criminality into the sphere of international criminality can only be properly exercised with due regard to constructive and creative adaptations and modifications of the law. This is evident from this Chamber's articulation in that Decision of the variables relevant to determining the degree of specificity, to wit: (a) the nature of the allegations, (b) the nature of the specific crimes charged, (c) the circumstances under which the crimes were allegedly committed, (d) the duration of time over which the said acts or events constituting

[1] *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-2003-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003 [*Sesay* Decision on Form of Indictment].
[2] *Sesay* Decision on Form of Indictment, para. 9.

the crimes occurred, (e) the totality of the circumstances surrounding the commission of the alleged crimes, and (f) the Indictment as a whole and not isolated and separate paragraphs.[3]

6. Endorsing the foregoing judicial methodology, the Appeals Chamber of this Court, carved out what is now characterised as the *"sheer scale exception"* to the general rule of specificity governing the form of an Indictment in these terms:

> The pleading principles that apply to indictments at international criminal tribunals differ from those in domestic jurisdictions because of the nature and scale of the crimes when compared with those in domestic jurisdictions. For this reason, there is a narrow exception to the specificity requirement for indictments at international criminal tribunals. In some cases the widespread nature and sheer scale of the alleged crimes make it unnecessary and impracticable to require a high degree of specificity.[4]

7. Premised on this analysis, I find myself in full judicial accord with the Main Judgement's basic reasoning that an Indictment must state the material facts underpinning the charges but need not elaborate on the evidence by which such material facts are to be proven, and that what is material depends on the facts of the particular case and cannot be decided in the abstract.

8. Having set out the controlling principle on the issue of the requirement of specificity in pleading an indictment, I now reinforce my concurrence with the analyses and reasoning of the Main Judgement on selected aspects of several specific issues raised as challenges to the form of the Indictment with my own judicial articulation of the specific applicable principles as deduced from the existing jurisprudence.

3. Alleged Defects in the Form of the Indictment: Specific Principles[5]

3.1. Article 6(1)

9. As to degree of specificity required in respect of allegations pursuant to Article 6(1) of the Court's Statute, it is now settled law that the requirement of specificity is less stringent

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[3] *Sesay* Decision on Form of Indictment, para. 9.

[4] *Prosecutor v. Alex Tamba Brima, Bazzy Kamara, Santigie Borbor Kanu* (Case No.SCSL-2004-16-A) Judgment (AC) 22 February 2008, para. 41.

[5] For the case-law authorities in support of these principles, I rely on the footnote citations in the Main Judgement.

where it is alleged that an accused bears individual responsibility for the proscribed conduct but where there is no allegation that he committed it personally. It is incumbent on the Prosecution to adhere to the specificity principles by pleading and disclosing the particulars of the material facts underlying allegations of personal commission against the Accused in the Indictment.

3.2. Article 6(3)

10. As regards the degree of specificity for the pleading of allegations pursuant to Article 6(3) of the said Statute, my reading of the case-law is that the Prosecution must plead with sufficient particularity (a) the relationship of the Accused to his subordinates, (b) the Accused's knowledge of the crimes, and (c) the necessary and reasonable measures of a preventive or punitive character not taken by the accused.

3.3. Article 6(3)

11. On the issue of curing a defective indictment, I apprehend the operative principles to be (i) that a defective Indictment is indeed curable, (ii) that in determining whether the Prosecution has cured a defective Indictment, regard must be had to (a) whether the Accused received sufficient notice of the unpleaded allegations,[6] (b) the time and importance of the said information constituting such notice, and its impact on the ability of the Accused to prepare his defence.

3.4. Timing of Objections

12. Regarding the timing of objections put forward by the Defence, I reckon that two main principles apply. These are: (i) where the Accused objected in a timely manner at trial, the Prosecution bears the burden of disproving any presumption that the ability of the Accused to prepare his case has been materially impaired, and (ii) where the Defence raises the objection only in its closing argument, the burden is on the Defence to establish material impairment of his case.[7]

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[6] *CDF* Appeal Judgement, para. 443.
[7] *Bagosora* Appeal Decision, paras 45-47.

3.5. Divisibility of Joint Criminal Enterprise

13. On the issue of the divisibility or otherwise of a joint criminal enterprise, the preferable view of the law is that (i) the identities of the alleged participants and (ii) the continuing existence of the joint criminal enterprise throughout the whole duration of time pleaded in the Indictment are not ingredients of the *actus reus* requiring proof beyond reasonable doubt.

3.6. Divisibility of Joint Criminal Enterprise: Other Key Principles

14. Three other key principles governing the divisibility facet of the doctrine are: (i) the principle of collective or multiple participation, (ii) the principle of divisibility of the alleged criminality as between those falling within the scope of the criminal design and those having a nexus with the criminal design only by reason of foreseeability and (iii) principle of divisibility as to participants, time, and location.

3.7. Duration of Joint Criminal Enterprise

15. With respect to the time frame over which the joint criminal enterprise is alleged to have existed, I comprehend the overriding principle to be that though an Accused is entitled to notice of the duration of time of the existence of the joint criminal enterprise, the time at which the design or plan was formulated is immaterial and not, in law, required to be pleaded.

3.8. Purpose of Joint Criminal Enterprise

16. As to the purpose of the joint criminal enterprise, it is trite law that the purpose or object of a joint criminal enterprise is a *material* fact, and not *evidence*. Hence, it must be pleaded in the Indictment.

4. Alleged Defective Pleading of Joint Criminal Enterprise, Lack of Notice to Accused In Respect of Category Two of JCE and Alleged Impermissibility of Altering the Nature and Scope of JCE

17. In their Final Trial Briefs and Oral Presentations, Counsel for the three Accused argued strenuously three key issues of procedural import in respect of joint criminal enterprise

as a mode of liability. The first is the alleged defective pleading, on the part of the Prosecution, of joint criminal enterprise, as a mode of liability. The second is the alleged lack of notice to the Accused of category two of the joint criminal enterprise. The third is the alleged impermissibility of altering the nature and scope of the joint criminal enterprise as originally pleaded in the Indictment.

18. My judicial contribution to this aspect of the theme of joint criminal enterprise is to question, by way of *obiter*, judicial acquiescence in the threefold categorisation of joint criminal enterprise into (a) basic, (b) systemic, and (c) extended, and the legal justification for category (c), from the perspective of the principle of legality in its proscriptive and penological contexts, given the logical pitfalls latent in them.

19. In this regard, let me dispel any misconceptions as to my judicial posturing on these themes. First, I take no issue with the proposition that joint criminal enterprise is a mode of liability "firmly established in customary international law." I, likewise, take no issue with the view that Article 6(1) of the Statute of the Court implicitly or impliedly provides for, or incorporates, the notion of joint criminal enterprise as a mode of liability. In fact, I unreservedly subscribe to that viewpoint as reflected in a previous decision of this Chamber. By the same token, I am in full agreement with the proposition that the doctrine of joint criminal enterprise requires essentially a plurality of offenders.

20. I do not, however, share the judicial complacency about the seemingly-settled nature of the existing law on the subject in respect of the issues already alluded to. This is patently illusory.[8] As I have had occasion to express elsewhere on another subject, applying incoherent, disparate and unsettled principles of law is fraught with judicial perils which, inevitably, make us judges "*victims of the fallacy of slippery precedents.*"[9]

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[8] *See* Guenael Mettraux, *International Crimes and the Ad hoc Tribunals* (New York: Oxford University Press, 2005) pp. 287-288 where it is observed that: "After ten years of *ad hoc* Tribunals, joint criminal enterprise still remains one of the most contentious issues in their jurisprudential life and its contours have fluctuated a great deal over the years."

[9] *See* Dissenting Opinion of Hon. Justice Bankole Thompson in *Prosecutor v. Brima, Kanu and Kamara*, SCSL-03-16-T, Motion for Leave to Amend Indictment Against Accused Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, 6 May 2004, paras 5-7; See also Annex C, Separate Concurring and Partially Dissenting Opinion of Hon. Justice Bankole Thompson in *Prosecutor v. Moinina Fofana and Allieu Kondewa*, Case No. SCSL-14-04-5, 2nd of August 2007 at paras 23-31.

21. Being a creature of case-law, unquestionably and inevitably the doctrine of joint criminal enterprise bristles with legal subtleties and technicalities. In its present shape, the law is incomprehensibly opaque and amorphous as reflected by judicial attempts, in one sense, to separate category one and category two of the joint criminal enterprise mode of liability, and, in another sense, to equate them as variations of the same theme. Such attempts are, with all due respect, based on a fallacy. To do so defies logic, there being no affinity between them other than that of being a mode of liability. By force of logic, it cannot be asserted that where there is a shared intent by multiple offenders to engage in conduct proscribed by law there is necessarily always a kindred relationship to a mode of liability whereby multiple offenders having personal knowledge of a system of ill-treatment proscribed by law show an intent to promote the said system. The logical relationship here is characterised more by mutual exclusivity than inclusivity. In effect, apart from sharing the common denominator of mode of liability involving a plurality of offenders, they have nothing else in common.

22. The other problematic aspect of the doctrine as a form of liability relates to the proscriptive and penological dimensions of the third category. The analytical difficulty here can be stated this way: that there is evidently a lack of clarity as to how expansive is or should be the scope of liability envisaged by the third category of this form of liability; there is, likewise, a lack of clarity as to how foreseeability in the context of such liability is or should be interpreted; moreover there is no articulation of, or precision as to, what specific principles are applicable in determining the impact of this category of liability on, namely, (a) the principle that attribution of criminal responsibility to a person charged with violation of a proscriptive norm can only be predicated upon his or her own individual conduct, and (b) the principle that a person found guilty of criminal wrongdoing can only be penally sanctioned for his individual choice to engage in such conduct.[10]

23. Predicated upon my reasoning in paragraphs 19 to 22, I opine strongly that the present uncritical adoption and application of the doctrine of joint criminal enterprise, in its threefold dimension, unquestionably compounds not only the opaqueness and amorphous

[10] *See* an illuminating article on the subject by Alliston Marstan Danner and Jenny S. Martinez entitled "Guilty Associations: Joint Criminal Enterprise, Command Responsibility and Development of International Criminal Law" in *California Law Review* [2005] pp. 77-169.

character of some of its conceptual elements but also the degree of fluctuation of its doctrinal contours.[11]

5. Alleged Defects in the Form of the Indictment: Duplicity

24. In this part of the Opinion, I address in some detail the issue of duplicity as an alleged defect in the form of the Indictment. The issue is so fundamental that it needs some further judicial elucidation and elaboration and in the light of what, in my respectful opinion, is some degree of opaqueness in the existing law. Duplicity remains a contentious issue in law, but some principles are settled and beyond question.

25. The alleged irregularity stems from the formulation of Counts 7 and 12. Count 7 is formulated in these terms:

> Sexual slavery and any other form of sexual violence, A CRIME AGAINST HUMANITY, punishable under Article 2.8 of the Statute

26. In effect, the said Count charges each of the Accused with an unspecified number of separate and distinct offences of a "sexual nature, to wit, sexual slavery" and "any other form of sexual violence." I opine that it is settled as anything can be said to be in the field of criminal law that it is impermissible to charge, whether under national criminal law or international criminal law, an Accused person in a single Count with more than one offence. This goes to the issue of the principle of legality. Charging in this way leads to uncertainty, vagueness and duplicity.

27. The case-law and textual authorities make it clear that where an Indictment adopts the Count system of charging offences, and more than one crime is charged in a Count or where

[11] To underscore the controversial and unsettled state of the existing law governing joint criminal enterprise in the international criminal law field, specifically the foreseeability version of the doctrine, it is noteworthy that this sub-head of this mode of liability is not recognised in many national criminal law systems. These systems do not recognise liability on the part of alleged offenders in a common plan for crimes falling outside the scope of the alleged common criminal design, except where the presumption of natural and probable consequences applies (a presumption normally operative in the context crimes committed personally). For example, Germany, The Netherlands and Switzerland make no provisions for this type of liability in their criminal codes. Under English and Canadian laws, the doctrine does not penalise persons charged with a crime purportedly committed in pursuance of a joint criminal enterprise for crimes outside the scope of the common criminal design on the grounds of foreseeability. The doctrine of foreseeability, in the common law tradition, operates more within the domain of civil law, especially in the area of tort liability. Its extension as part of the doctrine of joint criminal

allegations are framed in such a way to create uncertainty and vagueness the particular Count is defective on grounds of duplicity, sometimes referred to as multiplicity.

28. The preponderant view of the law deducible from a comparative analysis of the jurisprudence of most of the major criminal law systems of the world is that this mode of laying charges in an Indictment offends one basic rule governing specificity as to the form of the indictment. *It is that each Count must contain a specific offence.* Count 7 is accordingly bad for duplicity. This finding notwithstanding, I concur in the position taken in the Main Judgement to proceed on the basis that the crime of sexual slavery is properly charged in the said Count and to strike out the offence of "any other form of sexual violation."

29. Count 12 also charges each Accused with three separate and distinct offences in these terms:

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

30. Applying the "plain or literal meaning rule" and guided by the conventional lexicological sources used by courts in judicial interpretation, it seems incontrovertible, as a matter of judicial interpretation rather than of judicial pragmatism, that one can conscript a child under the age of 15 years into an armed force without enlisting that child or without using the child to participate actively in hostilities. Enlisting connotes voluntary enrolment whereas conscripting connotes forcible enrolment. Evidently, there is a world of difference between the first two *acti rei* and the third *actus reus*. These are three (3) distinct and separate *acti rei*. To combine or incorporate them in a single count in an Indictment patently offends the rule against duplicity.

31. In a celebrated Decision of the Sierra Leone Court of Appeal, (still considered sound law) applying leading English case-law authorities on duplicity, vagueness and uncertainty as defects in the form of an indictment, it was authoritatively stated by a panel of three judges drawn from Britain, Sierra Leone, and Sri Lanka that:

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enterprise in the field of international criminal law is fraught with perilous consequences for both the principle of legality and the presumption of innocence.

> The general rule is that for each separate count there should be only one act set out which constitutes the offence. If two or three are set out in the same count, separated by the disjunctive 'or' the count is bad for duplicity and the conviction should be quashed.[12]

32. In my considered opinion, the crimes charged in Count 12 should have been properly laid as three (3) separate and distinct offences in three (3) separate counts. Hence, the said Count is bad for duplicity.[13] It is not necessary for me to make any further judicial pronouncement on this issue, for the purposes of this Opinion, given the analysis that appears in footnote 9 below.

6. Evidentiary Principles

33. In this part of the Opinion, though I subscribe, generally, to the exposition of the law embodied in the Main Judgment of the Chamber, I have thought it absolutely necessary to reinforce the said exposition with my own articulation of the said principles for the sake of clarity, precision and completeness. Evidently, the starting point in such an exercise is that in every criminal trial an Accused person is entitled to the presumption of innocence, enshrined in Article 17(3) of the Statute of the Special Court for Sierra Leone. Unquestionably, this is now a fundamental right.

34. I reckon that a logical corollary of this presumption underlying the international judicial criminal process is the core principle that the persuasive burden of proving the case

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[12] *Lansana and Eleven Others v. Reginam* ALRSL 186 (1970-71) (Sierra Leone); See an illuminating article on the subject by Professor Glanville Williams entitled "*The Count System and the Duplicity Rule*" (1966) Crim.L.R. pp 255-265 (under whom I was privileged to study Criminal Law at the University of Cambridge).

[13] Admittedly, in the context of the jurisprudence of the Special Court, the legal effect of duplicity as a defect in the form of the Indictment is, given the existing state of law, problematical and controversial. Apparently, there are two rival schools of thought. One is the viewpoint of the Appeals Chamber of the Court, which binds the Trial Chambers, that where evidence is adduced in support of one of the offences charged in a duplicitous count of an indictment, the effect of such evidence is to cure the duplicity if the evidence measures up to proof. The logic here is that it is open to an adjudicating body to convict an accused person on a duplicitous count the finding of duplicity notwithstanding. *See Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-T, AFRC Appeal Judgment. The other school of thought is that once a determination of duplicity in an Indictment is made, all subsequent proceedings are a nullity and the convictions obtained on such duplicitous count or counts must be quashed (See *Lansana's* case). This is the orthodox viewpoint and its implication is that conceptually duplicity is unconnected to evidence and that it is an issue which strikes at the root of a tribunal's jurisdiction. Some early English case-law authorities supporting this view of the law include *R. v. Molloy*, 2 K.B. 364 (1921), *R v. Surrey J.J. ex.p. Witherick*, 1 K.B. 450 (1932), *R v. Disney* 2 K.B. 138 (1933) and *R v. Wilmot All Rep* 628 (1933). It is noteworthy that these two schools of thought reflect the constant rivalry between judicial orthodoxy and judicial pragmatism.

against the Accused rests throughout the entire trial on the Prosecution; it does not shift, and that the requisite standard is proof beyond reasonable doubt, and not any lesser quantum. In a nutshell, this is the cardinal principle of liability that runs throughout the web of the criminal law, nationally and internationally. [14]

35. In its application of this presumption governing a criminal trial, a tribunal must specifically pay due regard to other related principles and doctrines, which require further elaboration in a trial, as this one, that is both factually intensive and legally complex.

36. One key guiding principle in the context of this case, in its consideration of the totality of evidence to the extent, if at all, to which it establishes the crimes severally as charged in the Indictment, which a tribunal must keep in focus throughout are the three theories of liability upon which the Prosecution's case is predicated, namely, (i) individual criminal liability, (ii) liability pursuant to joint criminal enterprise and (iii) liability in pursuance of command or superior responsibility. [15]

37. Further, a tribunal in a criminal trial must factor into the guilt phase or liability question the existence or lack thereof of any reasonable explanation other than the guilt of the accused person when evaluating the totality of the evidence in the case. This was declared authoritatively by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the case *Prosecutor v. Delalic et al*, in these terms:

> if there is another conclusion which is also reasonably open from the evidence, and which is as consistent with the innocence of an Accused as with his or her guilt, he or she must be acquitted. [16]

38. Another kindred doctrine to be applied in the context of trials of this magnitude is that where the Defence fails to challenge certain factual allegations as pleaded in the Indictment, such failure does not amount to admission of their proof. The principle remains whether the Prosecution has indeed proved the allegations beyond reasonable doubt.

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[14] *See* also Viscount Sankey, L.C. in *Woolmington v.D.P.P.* (1935) All England Law Reprint, p. 1 [England]. The principle is also recognised in both Common Law and Civil Law systems notably, American Law, French Law, German Law, Canadian Law, and Sierra Leone Law, and international and regional Conventions, notably, the Universal Declaration of Human Rights, the European Convention on Human Rights, and the African Charter on Human and Peoples' Rights.

[15] Article 6(1) and Article 6(3) of the Statute.

[16] Case No. IT-96-21-A, Judgement, 20 February 2001 (*Celebici* Appeal Judgement).

39. Furthermore and pre-eminently, in a criminal trial, it is imperative that the highest judicial protection be afforded to the right of an Accused not to incriminate himself. *Except for that period of judicial subservience to royal absolutism in the history of the development of English criminal law when the Bill of Attainder was the common accusatory instrument*, this principle has continued to enjoy in major criminal law systems a considerable measure of sacrosanctity, beginning with the *Magna Carta*. It is noteworthy that in American criminal justice, legal experts acknowledge that the most important procedural safeguard in the Fifth Amendment to the American Constitution is the protection against involuntary self-incrimination. The protection is consistent with the notion that both the investigating and adjudicating processes of the criminal justice system are predicated upon the clear rationale that the State must make its own case. In effect, it is the Prosecution that must bear the burden of proving the guilt of the Accused. The implication here is that the Accused cannot be compelled to assist the State in doing so. [17]

40. In full recognition of the foregoing principle, Article 17(4)(g) of the Statute of the Special Court expressly declares that:

> In the determination of any charge against the accused pursuant to the present Statute, be or shall be entitled to the following minimum guarantees in full equality:
>
> (g) Not to be compelled to testify against himself or herself or to confess guilt

41. Giving effect to this statutory provision this Trial Chamber, in its seminal interlocutory *Decision on the Admissibility of Certain Prior Statements of the Accused Given to the Prosecution*,[18] ruled inadmissible certain confession statements allegedly made by the First Accused to the Prosecution on the grounds that they were not obtained voluntarily, and accordingly excluded them from the trial proceedings. Hence, as a matter of law it is impermissible for a court to make any adverse comments on, or draw any inference of guilt from the decision of an Accused person not to testify on his own behalf or to remain silent or where it has been judicially determined that he was compelled to confess guilt.

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[17] *See* Anderson, James F. and Bankole Thompson, *American Criminal Procedures*, North Carolina: Carolina Academic Press, 2007 at page. 226 [Anderson & Thompson, *American Criminal Procedures*].

[18] *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T Decision on the Admissibility of Certain Prior Statements of the Accused Given to the Prosecution.

42. It is also noteworthy that in evaluating testimonies of witnesses in a criminal trial, certain key factors must be borne in mind. They include (a) their knowledge of the facts to which they testified (b) their demeanour, (c) their conduct, and (d) their character, to the extent possible. Equally significant in this regard are such matters as the probability, consistency and related features of the individual witness testimonies in the context of the totality of the evidence adduced in the case.[19]

43. Additional factors which a trial court must bear in mind in evaluating testimonies of witnesses are their disinterestedness or lack thereof (especially in the case of those characterised as "insider witnesses or accomplices"), the credibility of other witness accounts or other evidence presented in the case, (that is whether there is corroboration) and also possible motives of the witness when assessing the credibility of witnesses' testimonies.[20]

44. It must also be borne in mind by a tribunal that proof tendered in support of the events or episodes alleged to have occurred several years ago may well involve inherent uncertainties due to the imperfections and vagaries of human perception and recollection.

45. By far the most fundamental principle of evidentiary significance in the international criminal process is the principle of orality. This principle attaches primacy to the evidence generally given by witnesses in court as against statements made out of court on occasions prior to the testimony and trial. In effect, non-testimonial evidence should, generally, not be preferred to testimonial evidence. To this effect is a seminal Decision of this Trial Chamber entitled *Decision on Disclosure of Witness Statements and Cross-Examination*,[21] where the importance of the principle was underscored in these terms:

> "The Special Court adheres to the principle of orality, whereby witnesses shall, in principle, be heard directly by the Court."[22]

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[19] *See Brdjanin, supra*, note.
[20] May and Weirda, *International Criminal Evidence*, New York: Transnational Publishers Inc 2002 p. 169.
[21] *Prosecutor v. Norman, Fofana, Kondewa*, Case No. SCSL-04-14-PT (TC), Decision on Disclosure of Witness Statements and Cross-Examination, 16 July 2004.
[22] *Prosecutor v. Norman, Fofana, Kondewa*, Case No. SCSL-04-14-PT (TC), Decision on Disclosure of Witness Statements and Cross-Examination, 16 July 2004, para. 25.

46. A related evidentiary principle is that the extent of any material inconsistency between the oral testimony and a statement given prior to trial, if such portion or portions thereof were admitted in evidence, must be factored into the evaluation equation, so as to determine what weight, if any, to be attached to the particular testimony. By parity of reasoning, it is settled law that an inconsistency need not be fatal in that it depends on the circumstances, and may be explained by such factors as (i) the fallibilities of human recollection; and (ii) the nature, scope and methodology of questioning of witnesses during interviews by the party calling them. In this regard, it is trite law that the testimony of a single witness on a material fact does not require corroboration. Evidently, where an inconsistency is found not to be material, it has no prejudicial effect.

47. Of significance, too, in international criminal adjudication is the operative principle regarding the reception of hearsay evidence. In this regard, in contrast to criminal adjudication at the national or domestic level, hearsay evidence is not *per se* inadmissible. Where such evidence is admitted to prove the truth of its contents, a tribunal ought to be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy. The Court should also consider both the context and the circumstances under which it arose.[23] Hence, the fact that evidence is hearsay in character does not necessarily deprive it of probative value. This will depend upon the surrounding circumstances.

48. With respect to documentary evidence, the approach in the sphere of international criminal adjudication in contradistinction to that prevailing in the sphere of domestic trials, is one of "extensive admissibility of evidence, leaving questions of credibility or authenticity" to be "determined according to the weight given to each of the materials by the Chamber at the appropriate time."[24]

49. Further, where direct evidence of a witness testifying to events, acts, incidents, and episodes actually perceived is being presented, the operative principle is that such evidence is

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[23] This principle again finds support from May and Weirda, cited *supra*, note at p. 10.7. *See* also *Prosecutor v. Blaskic* IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability (TC), para. 12.

[24] *See* May and Weirda, cited *supra*.

the most reliable form of proof, that is to say the best evidence the case can admit of, provided the witness is testifying truthfully.

50. At this point, I deem it necessary to express some additional thoughts on the issue of circumstantial evidence due to its importance in the context of this trial. Circumstantial evidence has been succinctly defined as evidence of circumstances surrounding an event, episode, incident, from which a fact at issue may be reasonably inferred.[25] There is authority for the view that a sound judicial approach to the evaluation of circumstantial evidence is the recognition that though the individual ingredients of circumstantial evidence, in a particular case, may be insufficient to establish a fact, yet taken conjunctively and cumulatively, their effect may be revealing, conclusive and decisive.[26] Equally significant is the principle that where the Prosecution's case is substantially based on circumstantial evidence, in order to convict the evidence must be such as to satisfy the Court that the facts proven are not only consistent with the guilt of the Accused, but also are such as to be inconsistent with any other reasonable conclusion.[27] In effect, the finger of guilt must point decisively at the Accused and no one else.

51. On the issue of the value of expert evidence, there are clearly recognised and established principles applicable within the domain of international criminal justice. It is trite knowledge that these principles are largely derivative in character, transplanted, as it were, from municipal law systems.

52. With specific reference to the admissibility of expert evidence, the law may be compendiously stated thus: (i) the subject matter of the proposed testimony must be a proper topic for expert evidence and not a matter within the knowledge and experience of the Court. For instance, where expert evidence "draws conclusions about the role of the accused, or generally fails to assist the Trial Chamber, [28] (ii) where the subject matter is a proper one for

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[25] *See* Colin Tapper (ed.) *Cross and Tapper on Evidence*, (London: Butterworths, 1995) p. 22.

[26] Exall (1866) Vol. 4 F&F. 922 at 929 [England] is one English case-law authority for this proposition: "Thus it may be in circumstantial evidence there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion, but the whole taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."

[27] *See Mogroy v. Director of Public Prosecutions* (1973) 1 All E.R. 503 [England].

[28] *See R v. B (R.H.)* (1994) 1 S.C.R. 656 [Canada]; See also Hatchard, John "Criminal Procedure in England and Wales" in John Hatchard et al, *Comparative Criminal Procedure*, London: British Institute of International and Comparative Law, 1996 at pp 176-233; See also May and Weirda, cited *supra*, pp 199-200.

expert evidence, it must be relevant in the sense of assisting the Court to determine an issue in dispute;[29] (iii) the expert must possess the necessary qualifications and credentials in the professed field of expertise; (iv) the reasoning or methodology underlying the testimony must be valid and properly applicable to the facts in issue; and (v) the expert must be independent.[30]

53. The settled principles of law on the issue of the probative value of expert testimony may be summarised thus: (i) the expert must not determine the ultimate issue of guilt or innocence, though, admittedly, in respect of international criminal trials conducted exclusively by professional judges "the question is more often not whether expressions on the ultimate issue should be allowed but whether they assist the Court."[31] For instance, evidence by a military expert purporting to comment on the command or superior responsibility of an Accused is inadmissible;[32] (ii) the expert must not usurp the function of the Court in assessing the credibility or truthfulness of a witness; (iii) the expert's role is to express an opinion or opinions on findings of fact but not to make those findings of fact; (iv) the Court is not bound to accept the evidence of an expert; (v) the criteria for evaluating the probative value of expert testimony include mainly: (a) the professional competence of the expert, (b) the methodologies or reasoning underlying the expert evidence, (c) the credibility of the findings made in the light of (a) and (b) and other evidence accepted by the Court.

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[29] See an illuminating article by Kellye L. Fabian "Proof and Consequences: An Analysis of the Tadic & Akayesu Trials" (2000) 49 *De Paul L. Rev.* 981.

[30] These principles are based, with certain modifications, on the principles operative within national law systems. In this regard, it is noteworthy that the recent jurisprudence of Canada on the subject of expert evidence bears striking resemblance to the approach adopted by international criminal tribunals. The new "principled approach" to hearsay allows such evidence to be admitted if it is both necessary and reliable, for example, if the circumstances surrounding the evidence sufficiently assures the Court of its truthworthiness. Where expert evidence contains hearsay, this fact will diminish the weight to be attached to such expert evidence. By comparison, the Australian law is close to its Canadian counterpart. In Australia, it is explicitly required that when experts use hearsay information as a basis for their opinions, their reliance on such information must be reasonable. The formula is that the greater the hearsay remainder of an opinion's basis, the less reliable it will be. In the United States, the approach to expert evidence is two-pronged: reliability and relevance. In determining reliability, the court must engage in a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether the reasoning can properly be applied to the facts in issue. In addition, when determining scientific reliability, the trial judge should consider: (a) whether the proffered knowledge can be or has been tested, (b) whether the theory or technique has been subjected to peer review, (c) the known or potential rate of error, and (d) whether the theory or technique has gained general acceptance in the relevant scientific discipline: *See Daubert v. Merrel Dow Pharmaceuticals Inc.* (113) S.Ct. 2786 (1993) [United States of America], a leading decision in the USA; see also the earlier case of *Frye v. United States*, 293 F. 1013 (DC.Cir.) (1923).

[31] *See* May and Weirda, cited *supra*.

[32] *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2-T, International Criminal Tribunal for the Former Yugoslavia, Official Transcript, 28 January 2000 at p. 13268-13306 is authority for this principle.

7. Defence of Alibi Raised by the Second Accused

7.1. Applicable Principles[33]

54. The Defence for the Second Accused raised the defence of alibi. This is another issue of much significance that I have addressed in this Opinion as deserving of further analysis both in terms of the applicable principles and their application to the case of the Second Accused. It is relied upon extensively by the Second Accused.

55. I entirely subscribe to the exposition of the principles, reasoning, analyses and findings in respect of the said defence in the Main Judgment. However, I have decided to add some of my own further judicial thoughts for two reasons: (i) the need for more clarity and completeness, and (ii) the overriding need to dispense even-handed justice. As a preliminary observation, suffice it to say that alibi, as a defence, bristles with technicalities and subtleties of legal analysis, from both the prosecutorial and defence perspectives. Hence, the need to further articulate the law from these perspectives.

56. An Accused who puts forward the defence of alibi, is not only saying that he is not guilty; he is also claiming to be innocent. The defence is based upon the idea that he could not have committed the crime charged because he was elsewhere when it was committed. In essence, in law an alibi is the defence by an accused person of having been elsewhere at the time an alleged offence was committed.

57. From a purely legal perspective, an alibi, if credible, should create a reasonable doubt about the guilt of the Accused. It is trite law that where an alibi defence is put forward, the Prosecution has the burden of disproving it beyond reasonable doubt. To enable the Prosecution to satisfy this burden, it must be made aware of the defence within a prescribed

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[33] These principles and propositions of law are largely deducible from English common law jurisprudence on the subject and, to some extent, from the evolving jurisprudence of international criminal tribunals. To this effect, see *R v. Goodway*, 98 Cr. App. R. 11 CA, *R v. Lucas* & (1981) 1QB720, 73 Cr. App. R, 159 CA, *R v. Lesley* (1996) 1 Cr. App. R. 39 CA, *R v. Turnbull and others* (1977) QB. 224, *R v. Penmam* 82 Cr. App. R. 44, *R v. Francis*, 91 Cr. App. R 271, *R v. Pemberton*, 99 Cr. App. R. 228; See also (eds. P.J. Richardson et al) *Archbold, Criminal Pleading, Evidence and Practice*, London: Sweet and Maxwell 2002, page 1308. For case-law authorities representing the evolving jurisprudence of the international criminal tribunals, see *Prosecutor v. Niyitegeka*, ICTR-96-14-A Judgement (AC), 9 July 2004; *Prosecutor v. Musema*, ICTR 96-13-A, Judgement, 16 November 2001(AC); *Celebici* Appeal Judgement, 20 February 2001; *Prosecutor v. Limaj, Bulia and Musliu*, IT-03-66-A Judgement (AC) 27 September 2007.

time to be able to verify the information and gather evidence to rebut the defence. This is, generally, provided for by statute. Procedural law requires that an alibi notice be filed where an Accused intends to offer evidence of absence from the scene of the alleged crime when it was committed. As a general rule, where the Accused does not provide an alibi notice, the Court may deny the admission of the alibi testimony. Exceptionally, the Court may extend the period within which the notice is to be filed upon good cause shown.

58. It is also settled law that where notice is not provided within the statutorily prescribed time or such extended time period granted upon good cause being shown or not at all, the Court may, pursuant to its statutory authority, consider the merits or otherwise of the defence in the context of the totality of the evidence, determining what weight, if any, to attach to it. Consistent with this principle, the Special Court has authority to consider the merits of an alibi defence in these circumstances pursuant to Rule 67 of its Rules of Procedure and Evidence which provides thus:

> (A) As early as reasonably practicable and in any event prior to the commencement of the trial:
>
> The defence shall notify the Prosecutor of its intent to enter:
>
> (a) The defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi."
>
> (B) Failure of the defence to provide such notice under this Rule shall not limit the rights of the accused to rely on the above defences.

59. The plain meaning of this statutory provision is that failure to serve a notice of alibi does not preclude an Accused from relying upon the defence as true. Judicially, this leads to the flip side of the defence. It is that it is settled law that whenever the Prosecution relies upon a false alibi, put forward by the accused, to reflect adversely on the credibility of the Accused and as incriminating evidence of guilt, the Court should draw guidance from the principle that a false alibi proffered by the Accused can only strengthen or support evidence against him only if the Court is satisfied that the false alibi (a) was put forward deliberately, (b) related to material issues in the case, and (c) that there is no innocent explanation for its falsity.

60. One clear rationale behind this judicial approach is that commonsense informs us that people sometimes tell lies, for instance, in an attempt to bolster up a just cause, or out of a

sense of shame, or out of a desire to conceal some disgraceful conduct. Therefore, it is only when the Court is satisfied, on the basis of the totality of the evidence adduced, that the only reason for the false alibi is to mislead the Court should an adverse inference be drawn.

61. An equally valid rationale for this cautious judicial approach is an avoidance of the fallacy that telling lies or putting forward a false alibi necessarily equals guilt or lack of innocence. Hence, the need for judicial vigilance regarding this line of reasoning. In effect, where an Accused gives evidence on a number of matters in respect of which he gives an alibi, and the Court may reasonably conclude in relation to some or all of the matters that he has been telling untruths thereby rendering his alibi false, the Court must guard against the danger of treating such conclusion as automatically probative of the guilt of the Accused in respect of the crimes charged.

7.2. Application of Defence of Alibi to Case for the Second Accused

62. For the sake of emphasis, clarity, and completeness, it is important to note, based on my recollection, that it was the Chamber's approach, when evaluating the totality of the evidence adduced in this case, that notwithstanding its significant Legal Findings that the instances of alibi put forward by the Second Accused in respect of the various crimes charged in the several counts in the Indictment were false, at no time did the Chamber seek to equate the falsity of those alibis with the notion of guilt. Rather, the Chamber was unduly judicially vigilant and scrupulous in giving primacy to the cardinal principle that where an alibi is raised or arises it is for the Prosecution to disprove or rebut it beyond reasonable doubt. Our finding that the Defence vacillated between whether to put forward or not to put forward an alibi in no way diminished our vigilance in adhering to the said principle.

63. Specifically, it is pertinent to recall that even though the Chamber, in its analysis of the credibility issues, did repudiate some aspects of the Second Accused's testimony relating to his defence of alibi as "nothing more than implausible afterthoughts, and to an extent, recent fabrications," a view that I wholly endorse, the Chamber has not, by this finding, implied that the Prosecution has necessarily succeeded in discharging its burden or proving the charges against the Second Accused beyond reasonable doubt. To this extent, we cautioned ourselves that, as a matter of law, the collapse of an alibi defence does not, without more, lead reasonably to the inference that the Prosecution has established the guilt of the Accused.

64. In sum, the Chamber meticulously reviewed and evaluated the totality of the evidence, making appropriate factual and Legal Findings and conclusions in respect of the several counts in the Indictment to ascertain whether the Prosecution has established the guilt of the Second Accused on each count based on their theories of liability, even though the Chamber found, in several instances, that the Defence had moulded its alibi to fit the case of the Prosecution as it was presented.

8. Possible Ground for the Excluding Criminal Responsibility arising from the Totality of the Evidence

8.1. Introduction

65. By way of analysis reinforcing my concurrence with the Main Judgment, one crucial issue, in my considered view, needs to be addressed in this Separate Opinion. It is whether, on a reasonable interpretation of the totality of the evidence, the facts and circumstances do raise, in favour of the Accused, severally or jointly, any possible ground or grounds for excluding criminal liability as alleged under Article 6(1) or Article 6(3) of the Statute of the Court.[34] This inquiry is necessary in a trial of this nature because almost nothing is as complex in the judicial process as that of determining the guilt of persons accused of criminal wrongdoing of such magnitude, dimension and scale. Hence, the compelling need to explore every facet of the case scrupulously guided by the reasonable doubt yardstick.

66. The notion of defences or grounds for excluding criminal responsibility in international criminal law is, at this stage of the evolving jurisprudence in the field of international criminal adjudication, acutely controversial. In a commentary on the theme of defences in international criminal law derived from national laws of the world's legal systems, Professor Knoops quite pertinently observes:

> The absence of a general part of ICL is not remedied by the proviso of Article 31 of ICC Statute, whose heading misleadingly suggests a complete compilation of all defences. Apart from its clear supplementary function – stemming from its starting text "*in addition to other grounds for excluding criminal responsibility* [...]" several major defences are not included in this proviso [...]

[34] For this analytical or methodological approach, see Dissenting Opinion of Hon. Justice Bankole Thompson in *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-T, Judgement (TC), 2 August 2007 [*CDF* Trial Judgement] at paras 62-90.

> On the provisional basis of Article 31(2) and (3), however, the ICC is empowered to adjudicate additional defences, within the limits of Article 21. Article 21 allows the Court to apply, besides its Statute and Rules of Procedure and Evidence, not only treaties and principles or rules of international law (of armed conflict) but also "*principles of law derived from national laws of legal systems of the world including, as appropriate, the national laws of states that would normally exercise jurisdiction over the crime.*"[35]

67. Consistent with the above commentary, de Guzman has likewise stated that:

> In developing the international criminal law relating to defences, it is essential that the Court be permitted to draw on principles of criminal law derived from national legal systems....(which) therefore enhances the Court's ability to fill/lacunae in the international criminal law.[36]

68. Endorsing the above observations, I strongly incline to the view that it is a compelling norm dictated by even-handed justice to consider, in criminal adjudication at the international level, all possible grounds for excluding criminal responsibility reasonably open to the Accused persons, whether raised or not. Hence, the analysis in the succeeding paragraphs of this Opinion.

69. It is an analysis consistent with the obligation of every adjudicating body to dispense even-handed justice and inspired by the philosophy that there is absolutely no judicial warrant to treat crimes against humanity, war crimes and other grave violations of international humanitarian law as offences of strict liability. Such a danger seems implicit in the present judicial trend in international criminal tribunals to treat recognised defences applicable in municipal criminal law systems merely as mitigating factors relevant only to the sentencing

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[35] Knoops, Geert-Jan G.J., *Defenses in Contemporary International Criminal Law*, New York: Transnational Publishers, Inc. 2001, pp. 30-31 [*Knoops, Defenses in Contemporary International Criminal Law*]

[36] de Guzman, Margaret McAuliffe, Article 21, Margin No 15, in *Commentary on the Rome Statute* (Otto Triffterer ed. 1999). *See* also an illuminating article by Elies van Sliedregt titled *Defences in International Criminal Law* based on a recently published Ph.D research by T.M.C. Asser Press, *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law*, The Hague 2003 at page 78 where the author observes on this commentary on Article 31 of the ICC Statute: The defences listed in Article 31 are: mental defect (subparagraph a), intoxication (subparagraph b), self-defence (subparagraph c), and duress (subparagraph d). Other defences under the ICC Statute are: abandonment (Article 25 paragraph 38), exclusion of jurisdiction of persons under 18 (Article 26), mistake of fact and law (Article 32) and superior orders (Article 33). The possibility for the Court to apply defences outside its Statute is provided for in paragraph three of Article 31: *At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in Article 21. This means that the Court can resort to rules of international laws or to general principles of law derived from municipal criminal legal systems. As to the former, general and/or military necessity, reprisals, and tuquoque can be included. As to the latter, consent to the victim, conflict of interests, self-defence, and necessity exist as possible grounds for excluding punishability*, p. 7.

phase of such trials. Such a judicial methodology has the potential of inhibiting growth and judicial creativity in this area of international criminal jurisprudence. Hence, this analysis is anchored on one settled principle of national criminal laws. *It is that it is the duty of a trial court to consider every issue which fairly and reasonably arises on the evidence, even though the defence is not expressly relying on it.*[37]

70. In this regard, I draw further guidance from two key principles in the sphere of criminal adjudication. The first is that "to establish criminal liability, the Prosecution must prove that the accused or defendant did the act which is the target of the criminal law's prohibition and that he had the requisite mental state."[38] The second is that even where the Prosecution has proved the *actus reus* and the *mens rea* of the offences charged, this "does not imply that criminal liability automatically attaches to the Accused or the Defendant. His conduct may well have been, in the eyes of the law, justifiable."[39] Stated slightly differently, it has long been established law, firstly, that in all criminal cases the Prosecution has the burden of proof, and, secondly, that even when the Prosecution has proved the elements of the crime beyond reasonable doubt, the Accused persons may still be exonerated from criminal liability by reason of certain defences.[40]

71. These fundamental principles were succinctly put in context by Professor Glanville Williams, an eminent English jurist in these terms:

> That a person does a forbidden act, even intentionally, does not mean that he is necessarily guilty of the offence. Various defences are recognised, quite apart from the defence of absence of the requisite element or degree of fault. Among the circumstances of justification or excuse are self-defence, duress, and (in some cases) the consent of the person affected. A verdict of "not guilty" does not necessarily mean that the defendant did not do the forbidden act. It may mean that he did not have the requisite mental state or other fault element, or also had some justification or excuse.[41]

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[37] *See R v. Mair* (1995) 48 WIR 262 and *R v. Stanley McKenzie* (unreported) SCCA No. 62/91 delivered on March 11, 1992 by the Jamaican Supreme Court of Criminal Appeal.

[38] Thompson, Bankole, *The Criminal Law of Sierra Leone* (Maryland: University Press of American Inc., 1999) p. 259 [Thompson, *The Criminal Law of Sierra Leone*].

[39] Id.: p. 259.

[40] Samaha, Joel, *Criminal Law* (Wadsworth Thomson Learning Inc., Belmont, 2001) p. 212 [Samaha, *Criminal Law*].

[41] *Textbook of Criminal Law* (London: Stevens & Sons Ltd, 1978) pp 38-39 [Williams, *Textbook of Criminal Law*].

72. I reiterate that it is precisely the question as to whether, on a reasonable interpretation of the totality of the evidence adduced at the trial, the Accused are entitled to some recognised defence or defences that is the theme of this section of my Separate Opinion. In effect, I have adopted a broader judicial focus than that of the Main Judgment in addressing (a) the issue of the entitlement of the Accused to have considered in their favour, as part of their case, any possible defence or exonerating factor arising, on a reasonable interpretation of the totality of the evidence, and, if so, (b) whether such defence or exonerating factor is sustainable in law, given the facts and circumstances of the case.

8.2. Defence of Just War or Rebellion: Ideological Basis

8.2.1.1. Preliminary Observations

73. *In my considered view, one possible ground for excluding criminal responsibility that, on a reasonable interpretation of the totality of the evidence before the Chamber, arises is that of the doctrine of just war or the right to rebel against a corrupt and oppressive civilian government. This defence is embedded in the RUF ideology.* An examination of the totality of the evidence does reveal, in my considered judgment, a recurrent claim by the Accused, either through their testimonies or the testimonies of witnesses who testified on their behalf, implicitly or obliquely, that the RUF was an ideological movement with political and military objectives whose cause was justified.[42] The political ideology was an integral component of the movement.[43] Soldiers were taught the military ideology and the brunt of the ideological training centred on the political goals of the revolution at Camp Naama training base as far back as 1991.[44]

74. A crucial aspect of the political component of the ideology was the acceptability of taking up arms to defend oneself against one's enemies.[45] *The RUF believed its goals were justifiable as a revolutionary group embarking on an armed liberation campaign against a corrupt government.*[46] As the architect of the ideology, Foday Sankoh postulated that the RUF revolution was people-orientated which would succeed or fail depending on the people's support or lack thereof. In this regard, the inspiration for the revolution was the will of the

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[42] Exhibit 38.
[43] Transcript of 24 January 2005, FT1-071 pp. 25, 27; Transcript of 6 June 2008, DAG-080, pp. 5-6.
[44] Transcript of 24 July 2006, FT1-371, p. 68; See also Exhibits 38, 273, and 367.
[45] Transcript of 19 October 2007, DIS-069, p. 50.
[46] Transcript of 2 November 2007, DIS-188, p. 28.

people. This is the familiar quest for legitimacy of a revolution in jurisprudential theory, the effect of which is to seek to vest political sovereignty in the people, derived from the Kelsenian idea that a revolution begets its own legality.[47]

75. This is the evidentiary foundation upon which it may reasonably be predicated that the defence of a just war or rebellion arises, given the state of the totality of the evidence, even though not expressly relied upon by the Accused.

8.2.1.2. Legal Analysis

76. Analytically, it is important to note that despite the existence of some clearly-defined principles, whether in the context of an operative legal system or based on mere juristic rationalisations, governing a just war or rebellion, as a response to allegations of criminal wrongdoing, yet the doctrine remains acutely controversial as to its precise status, nature and scope.

77. Conceptually, the doctrine can be traced back to Cicero, Augustine of Hippo, and Thomas Acquinas. Grotius, the famous Dutch jurist, later codified a set of rules for a just war which are of contemporary relevance, the familiar vocabulary being the *jus bellum*, *jus ad bello*, and *jus post bellum*. In its crude theological setting, the doctrine was taught by Thomas Acquinas in the form of the precept that anger is the passion (emotion) by which a man reacts to evil, real or apparent, and seeks vindication of his rights, that is, justice. In effect, the pith of the doctrine, from the theological perspective, is that the presence of evil should provoke righteous indignation.[48]

78. *In contemporary jurisprudence, a major perspective of the application of the just war doctrine is that if the people of a nation are experiencing oppression, hardship or misery, and they are themselves capable of bringing an end to such maladies, they are morally entitled to have recourse to force of arms in the form of rebellion or war.* Given the doctrinal plausibility of this proposition, it is, however,

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[47] *See* Thompson, Bankole, *Constitutional History and Law of Sierra Leone (1961-1995)*, Maryland: University Press of America: 1997 at page 200 for this reasoning in constitutional law theory [Thompson, *Constitutional History and Law of Sierra Leone*].

[48] *See* Just War in the Cathecism of the Catholic Church, in http:www.ewtn.com/expert/answers/just_war.htm,3/4/2008, p. 1.

subject to very strict legal conditions in terms of its applicability. In effect, the doctrine can only prevail or suffice legally if those conditions are fulfilled. What, then, are the conditions?

79. My researches disclose that the following propositions[49] compendiously represent the contemporary law on the sustainability of the just war doctrine as a possible defence to criminal wrongdoing:

(i) A just war can only be waged as a last resort. All non-violent options must be exhausted before the use of force can be justified.

(ii) A war is just only if it is waged by a legitimate authority.

(iii) A just war can only be fought to redeem a wrong suffered.

(iv) A war can only be just if it is fought with reasonable chance of success.

(v) The ultimate goal of a just war is to re-establish peace.

(vi) The violence used in the war must be proportional to the injury suffered.

(vii) The weapons used in war must discriminate between combatants and non-combatants.

80. Relying on this exposition of the law, the next judicial inquiry is whether the doctrine of just war is legally tenable or sustainable as an answer to the charges against the Accused. In effect, applying the above principles, the issue for determination is whether the facts of this case, as gathered from the totality of the evidence, are so compelling as to justify a reasonable conclusion that the just war doctrine does operate to negate the variety of mental states required for the commission of the crimes charged in the Indictment thereby exonerating the Accused.

8.2.1.3. Significant Legal Findings

81. Predicated upon the foregoing exposition of the law and an evaluation of the totality of the evidence, I make these significant findings:

(i) that the Defence has not shown that the rebellion, revolution, and overthrow of the legitimate and democratically-elected government of President Kabbah was the last resort, leaving the RUF no other non-violent options before resorting to armed force. On the contrary, there is overwhelming evidence to the effect that the decision to wage

[49] *See* Vincent Ferraro Resources, Mount Holycke College International Relations Program (http:/www.mtholyoke.edu/geod/intrel/po1116/justwar.htm) 3/4/2008, p. 1.

a war pre-dates the tenure of the Kabbah government going as far back as Camp Naama in Liberia in 1991.

(ii) that the inference is irresistible that the RUF/AFRC alliance, Junta Government or rebels, enjoyed no constitutional legitimacy either as the legislative or executive authority of Sierra Leone at the relevant times alleged in the Indictment.

(iii) that there is no sufficient evidence of governmental wrongs justifying recourse to a rebellion or war by the RUF/AFRC alliance or Junta Government, and specifically to support the allegations of injustice, corruption, maladministration, and other societal maladies prevailing at the time.

(iv) that no evidence was adduced of reasonable prospect of success of the revolution or rebellion.

(v) that there is no evidence that the ultimate goal of the war was to re-establish peace.

(vi) that there is overwhelming evidence that the nature, scale, level and intensity of violence exhibited and displayed during the war was disproportionate and excessive.

(vii) that the weapons used in the war did not discriminate between combatants and civilians.

8.2.1.4. Conclusion[50]

82. Based on the several considerations herein, I, accordingly, conclude on the basis of the foregoing that the doctrine of just war, as a defence in the context of this case is legally unsustainable and cannot, therefore, in law, avail the Accused. By parity of reasoning, I hold that the non-proscriptive character of a rebellion as a crime, at this stage of the development

[50] Logically, a major difficulty posed by the doctrine of just war as a possible exonerating factor in the context of the peculiar facts and circumstances of this case is that of juridical ambivalence given the nature and objectives of the military component of the RUF ideology. The ambivalence is manifest in two senses: the theoretical and the normative. In the former, it is when viewed from the perspective, whether monist or dualist, of the doctrinal relationship between Sierra Leone law and international law. In the latter, it reflects a normative dichotomy or tension in the doctrinal relationship between Sierra Leone criminal law and international criminal law. In essence, the two legal regimes present a clash of proscriptive rationales. Under Sierra Leone criminal law, it is treasonable to endeavour or prepare to overthrow the Government of Sierra Leone by force. Hence, any revolutionary ideology whose military objective is the overthrow of the Government of Sierra Leone by force of arms is a crime. (See Sections 3(1)(a) and (b), of the Treason and State Offences Act No. 10, 1963). Under international criminal law, it is not an offence to endeavour or prepare to overthrow the Government of Sierra Leone by force since "there is no rule against rebellion in international law." (See *Prosecutor v. Morris Kallon and Brima Bazzy Kamara*, Case No. SCSL-2004-16-AR 72 (E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, Appeals Chamber, 13 March 2004 at para. 20 citing M.N. Shaw, *International Law* (5th ed. 2003) p. 1040). Evidently, we are confronted here with a normative disparity.

of international criminal law, does not negate or diminish the liability of the Accused for the crimes charged.

9. Humane Treatment of the Civilian Population by RUF as "Occupying Force" in Kailahun District

9.1. Introduction

83. In my considered view, another key issue deserving some judicial consideration as a possible exonerating factor, embedded in the evidence adduced by the Defence in support of their case, severally and jointly, is that of the provision of various types of humanitarian relief and services to the civilian population by the RUF leadership during the time the RUF was stationed in Kailahun District. Counsel for the First Accused submitted that such obligations and responsibilities emanated from the role of the RUF as an "Occupying Power or Force" in Kailahun District at the material time, and that such obligations are founded in international law.

84. I further opine that regardless of whether this evidence can be construed as a formal defence or not, it does deserve some judicial consideration due to its extensive nature, scope, and dimension. Hence the additional justification for a further consideration of the said evidence as the basis for the legal submissions of Counsel for the First Accused.

9.2. Legal Submissions of the First Accused

85. Learned Counsel for the First Accused submitted quite forcefully that the RUF had adopted the role of an occupying force, as regards both persons and property, within Kailahun. Relying on the criteria used by the ICTY in *Prosecutor v. Naletilic and Martinovic*, he submitted that the authority of the RUF had been established and exercised[51] and the civilians of Kailahun were governed by the RUF's *de facto* government.[52]

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[51] Article 42 of the Hague Regulations provides the following definition of occupation: "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory of the hostile army."

[52] This is the requirement for Geneva Convention IV to apply. In this respect the rights and duties pursuant to the Geneva Convention IV concerning individuals differs from its application under Article 42 of the Hague

86. Mr Jordash argued that the status of occupying power does not signify that the RUF breached international humanitarian law.[53] Quite the contrary: in fact it entails a number of legal rights and concomitant obligations. However, it does affect the assessment of the RUF and the Accused's actions subsequent to establishment of its status as occupying power, by creating extensive rights and obligations. According to learned Counsel, RUF was required to:

(i) take all measures in its power to restore and ensure as far as possible public order and safety while respecting the laws in force in the country;

(ii) ensure, to the fullest extent of the means available to them, the food and medical supplies of the population as well as more general satisfaction of the medical needs of the civilian population;

(iii) ensure provision of the clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.

87. In addition, Counsel contended that as an "Occupying Power," the RUF was permitted to:

(i) take such measures of control and security in regard to protected persons as was necessary as a result of the war, provided that certain basic protections of the person, religion, family rights, religion and custom were upheld;

(ii) subject the population to measures necessary to enable the occupying power to fulfil the above obligations, to maintain the orderly government of the territory, to ensure the security of the Occupying Power, and the members and property of the occupying forces or administration;

(iii) requisition foodstuffs or medical supplies available in the occupied territory or material and stores of civilian hospitals for use by the occupation forces and administration personnel, if the requirements of the civilian population have been taken into account;

(iv) undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand;

Regulations and does not depend upon the occupying force having actual authority. See *Prosecutor v. Naletilic and Martinovic* TC, Para. 220 and legal submissions in part I of this brief.

[53] See UN Security Council Resolution 1483. See also Eyal Benvenisti, "Agora: Future Implications of the Iraq Conflict: Water Conflicts During the Occupation of Iraq" 97 American Journal of International Law 860 at 861-3.

(v) displace the civilian population for imperative military reasons, provided that "all possible measures [are] taken in order that the civilian population may be received under satisfactory condition of shelter, hygiene, healthy, safety and nutrition;

(vi) prevent protected persons from leaving the territory if their departure is contrary to the armed group's interests;

(vii) change the law in force where necessary;

(viii) impose sanctions and penalties, provided that the objects thereof can be considered as jointly and severally responsible for the acts concerned;

(ix) requisition civilian medical units, their equipment, their material or the services of their personnel if these resources are unnecessary for the provision of adequate medical services for the civilian population or for the continuing medical care of any wounded and sick already under treatment;

(x) destroy real or personal property, whether privately or publicly owned if absolutely necessary for the purposes of military operations;

(xi) control public property;

(xii) seize any appliance "adapted for the transmission of news, or for the transport of persons or things" as well as depots of arms all kinds of munitions of war;

(xiii) seize or requisition private property for the needs of the army;

(xiv) collect the taxes, dues, and tolls usually imposed for the benefit of the State;

(xv) levy other contributions for the needs of the army or of the administration of the territory;

(xvi) remove public officials from their posts;

(xvii) demand requisitions in kind and services from municipalities or inhabitants, for the needs of the army of occupation;

(xviii) compel protected persons to work, subject to fulfilment of the following conditions:

(xix) compulsion may be only to the same extent as nationals of the Party to the conflict in whose territory they are;

(xx) the work must be necessary to ensure basic needs and not for the purposes of military operations;

(xxi) those compelled must be over eighteen years of age.

9.3. Defence Evidence and Prosecution Evidence in Adversarial Contraposition

88. It may be recalled that several witnesses testified for the Defence on the issue of the humane treatment accorded to the civilian population by the RUF military leadership.

Testimonies covered a wide range of services and facilities alleged to have been made available to the civilian population especially in Kailahun District where, in the submission of Counsel for the First Accused, the RUF fighting forces were an "Occupying Power."

89. The Prosecution's evidence is to the contrary. The gist of the Prosecution's evidence, found to be more credible by the Chamber in its factual and Legal Findings, is that of widespread and systematic abductions of civilians, their enslavement, subjugation to forced labour, including farming, carrying of loads, diamond mining, fishing, hunting, domestic labour, other menial and demeaning tasks, military training, coupled with the commission, on a massive scale, of the specific crimes against humanity and war crimes alleged in the Indictment.

90. It is the contention of the First Accused that the civilian population in Kailahun District was accorded throughout the period of occupation relevant to the Indictment, varieties of humanitarian relief and services by the RUF military leadership. The state of the evidence for the Defence manifestly depicts the existence of a benevolent and charitable educational, medical, and social welfare system for civilians organised and administered by the RUF military leadership consistent with its much-vaunted ideological avowal of adherence to the principle of humane treatment for civilians during a war and respect for their rights and freedoms.

91. It is a recurring theme of benevolence and charity, heavily punctuated by witnesses' vivid recollections of the halcyon days under RUF military protection, with a civilian population luxuriating in the abundance of earth's natural products.

9.4. Summary of Defence Evidence

92. The relevant evidence which provides the foundation for the legal submission that the RUF was, at all relevant times, the "Occupying Power or Force" in Kailahun District is set out in paragraphs 93-100.

9.4.1. Establishment of farms in Kailahun District

93. As regards the issue of establishment of farms in Kailahun District, there was evidence that two months after the Junta, the civilians in Kailahun District lived happily among

themselves with their relatives in Pendembu, Kailahun District,[54] and that their leaders assembled them for the cultivation of a community farm for their sustenance and for the front line.[55] Civilians worked on various farms including Bandajuma, Giema and Kenewa and there was no ill treatment of civilians at the farms, they were happy to work as long as they had food to eat.[56]

94. The civilians were happy to work on the farms and the armed guards at the farms were there to protect them.[57] No one was forced to work[58] on the government farms or Sesay's farm in Giema. Moreover Sesay provided food for the civilians working on the farms and those who attended religious services.[59] Whilst at the farms, civilians prepared meals for themselves from the bags of rice, meat and salt provided for them by the S4 and Sesay.[60]

95. There was also evidence that the civilians and RUF fighters all worked together."[61] DIS-252 testified that "every arrangement that would come from Mr Sesay [...] we are ready to do it" and "[Sesay is] our master and he did not give us any bad treatment so whatever he wanted we will do for him."[62] These witnesses further testified that the fighters and civilians lived harmoniously with one another in the RUF-controlled areas; that there was no ill-treatment of civilians; and that any instances of wrongdoing by the rebels were immediately rectified.[63]

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[54] Transcript of 26 October 2007, DIS-188, pp. 66-68.
[55] Transcript of 4 October 2007, DIS-177, pp. 102-103.
[56] Transcript of 4 October 2007, DIS-177, pp. 104-106.
[57] Transcript of 27 June 2007, DIS-302, pp. 35-41; Transcript of 18 January 2008, DIS-252 pp. 26, 28.
[58] Transcript of 21 January 2008, DIS-191, pp. 25-28; It was also made clear that no soldiers were present at the farms to attempt to force the workers, Transcript of 18 January 2008, DIS-252, pp. 26, 28; DIS-252 stated that "the first thing I want to tell this Court is that nobody was forced to do anything. These men, women, we were happy and we loved that man so we used to work for him wholeheartedly," Transcript of 18 January 2008, DIS-252, pp. 49. The witness disagreed with the Prosecution's suggestion that Sesay was forcing civilians to work; "I told you when we were going to the farm, we were happy going there because if we were around for two weeks and you had nothing to eat the day you go to that farm you had something to eat, and you would be full before coming home." Transcript of 18 January 2008, DIS-252, pp. 49; Transcript of 18 January 2008, DIS-252, pp. 49; As to what was received in return "[W]hen we used to go to that farm, we were all happy people to do that because we ate so much on that farm. If we wanted to drink, we drink enough; if you wanted to smoke, you smoke enough. So, if something like that was going on, everybody will be happy to do it. So that is why we were happy." Transcript of 18 January 2008, DIS-252 pp. 26, 28.
[59] Transcript of 27 June 2007, DIS-302, pp. 35-41.
[60] Transcript of 28 June 2007, DIS-301, pp. 31-38.
[61] Transcript of 18 January 2008, DIS-252, pp. 26, 28.
[62] Transcript of 18 January 2008, DIS-252, pp. 26, 28.
[63] Transcript of 4 October 2007, DIS-074, p. 26; Transcript of 6 March 2008, DIS-310, pp. 46-47.

96. Witnesses also testified that Sesay's commitment to the welfare of the civilians of Kailahun was such that he was well-known for providing Maggi, salt, tobacco, cigarettes and other essential goods to those who worked for him.[64] Such remuneration at a time of armed conflict was the only means by which workers could be truly compensated,[65] civilian compensation for their work being in the form of food. Both DIS-188 and DIS-281 testified to this.[66]

97. In addition, there was evidence that Sesay intended the produce from his farms for the civilian population of Kailahun, notably those living in and around Giema. He was interested in providing food for the people as well as seedlings to civilians.[67] "The people of Kailahun are farmers."[68] Sesay's farm was there to facilitate the subsequent personal endeavours of civilian farmers in providing for themselves and others.[69] Civilians worked willingly on community farms and in mines,[70] they were well taken care of, and went to the fields singing and dancing.[71] Further, civilians were allowed to keep some of the proceeds of community farming/mining,[72] and were able to farm for themselves.[73]

9.4.2. Civilian Military Training

98. On the issue of civilian training, the evidence was that civilians in Kenema and Kailahun volunteered for training, for instance many of the Kailahun civilians were related to the fighters and some joined voluntarily.[74] Some wanted to learn to defend themselves.[75]

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[64] Transcript of 26 October 2007, DIS-188, pp. 27-31; Transcript of 28 June 2007 DIS-301, pp. 57-58.
[65] Transcript of 26 October 2007, DIS-188, pp. 27-31; Civilians received salt, Maggi, rice through chiefdom Commander, town Commanders, and immediate Commanders through the G5. Civilians and soldiers treated nicely; Sam Bockarie provided food and the food was cooked for them. If there was no food at the airfield, food from surrounding villages brought, cooked, and eaten together; Transcript of 29 October 2007, DIS-188, pp. 56, 59; Food was cooked for the civilians, Transcript of 9 November 2007, DIS-281, pp. 70-71.
[66] Transcript of 29 October 2007, DIS-188, pp. 56, 59; Food was cooked for the civilians, Transcript of 9 November 2007, DIS-281, pp. 70-71.
[67] Transcript of 26 October 2007, DIS-188, pp. 27-31.
[68] Transcript of 26 October 2007, DIS-188, pp. 27-31.
[69] Transcript of 26 October 2007, DIS-188, pp. 27-31; Transcript of 21 January 2008, DIS-191, pp. 28-29.
[70] Transcript of 3 June 2008, DAG-048, p. 119. Transcript of 29 February 2008, DIS-089, p. 58. Transcript of 2 June 2008, DAG-110, p. 90.
[71] Transcript of 18 October 2007, DIS-178, pp. 70-71.
[72] Transcript of 3 June 2008, DAG-048, p. 119; Transcript of 29 February 2008, DIS-089, p. 58; Transcript of 2 June 2008, DAG-110, p. 90; Transcript of 22 October 2007, DIS-069, pp. 86, 90; Transcript of 25 October 2007, DIS-069, p. 24; Transcript of 22 November 2007, DIS-124, pp. 126-127; Transcript of 13 November 2007, DIS-293, p. 55; Transcript of 22 October 2007, DIS-069, p. 90; Transcript of 5 November 2007, DIS-149, p. 74.
[73] Transcript of 18 October 2007, DIS-178, pp. 70-71.
[74] Transcript of 25 January 2008, DIS-157, p. 30.

According to TF1-168, civilians wanted to be trained for many reasons including the desire to experience training without going to fight while others were gallant and wanted to fight, in the RUF, military training was by itself a status symbol.[76]

9.4.3. Operation of Schools and Hospitals

99. On the issue of operation of schools and hospitals, certain witnesses testified that the RUF provided free medical care and education in rebel-controlled zones.[77] A school was opened in Giema. Issa Sesay ordered that all children were to be sent to school, there was no discrimination and no payment required to send children to school.[78] It was compulsory to send children to school, children of civilians and fighters attended school.[79] Other schools also operated in Kailahun, Bandajuma, Sandia and its environs. Children who did not attend school were taken care of by the RUF; also there were "laws" preventing children from being treated like slaves at home.[80] In addition, religious services were organised in Giema for both Muslims and Christians. After Friday prayers Sesay would provide food for the people. According to DIS- 302, life in Giema with Sesay as the boss man was happy; everyone was happy.[81] Hospitals and pharmacies were in operation, funded by the RUF and treatment was free.[82] The police were also operating. They handled theft cases; for instance, DIS-293 referred to someone stealing chickens at night.[83] The people were living peacefully in the town[84] and going about their own business.[85]

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[75] Transcript of 11 January 2008, DIS-163, p. 30.
[76] Transcript of 3 April 2005, TF1-168, pp. 23-24.
[77] Transcript of 30 October 2007, DIS-188, p. 38 (CS), Transcript of 13 November 2007, DIS-281, p. 14 (CS), Transcript of 22 January 2008, DIS-164, p.75 (CS).
[78] Transcript of 4 October 2007,DIS-177, pp.106 -107.
[79] Transcript of 22 November 2007, DIS-124, pp. 146; Transcript of 13 November 2007, DIS-293, pp. 70.
[80] Transcript of 22 November 2007, DIS-124, pp. 149, 151.
[81] Transcript of 27 June 2007, DIS-302, pp. 9, 13-14; Stationeries for Schools were provided by the RUF, Transcript of 22 November 2007, DIS-124, pp.146.
[82] Transcript of 22 November 2007, DIS-124, pp. 145- 146.
[83] Transcript of 13 November 2007, DIS-293, pp. 69-70.
[84] Transcript of 22 November 2007, DIS-124, pp. 125-126; Transcript of 13 November 2007, DIS-293, pp. 88-89.
[85] Transcript of 26 October 2007, DIS-188, pp. 68, 70.

9.4.4. Sesay as Interim leader

100. TF1-078 testified that when Sesay became the Interim Leader of the RUF the civilians "were happy about it, because we liked him and he was always in our interest. He was always operating in our interests."[86]

101. The foregoing is, in essence, the evidence by the Defence on the issue of an idyllic existence during the time when the RUF was stationed or garrisoned in Kailahun District. It is noteworthy, as significantly found by the Chamber, that the environment prevailing in Kailahun District at the relevant time of the Indictment, was one really dominated by bondage, coercion, captivity, enslavement, and siege, a contrasting scenario vis-à-vis that portrayed by the Defence evidence.

9.4.5. Legal Analysis and Significant Findings

102. Given the foregoing extensive evidential foundation on the issue of humane treatment of civilians, the critical question for determination in this part of the Opinion is whether the claim by the Defence of humane treatment of the civilian population by the RUF military leadership in Kailahun District has any legal basis to justify its invocation of the rights and responsibilities of an Occupying Power under international law.

103. *It is settled law that the key criterion, if not condition precedent, for deciding the applicability of the law of belligerent occupation is that of effective control of territory by a foreign armed force or forces.*[87]

104. Guided by the foregoing principle, and given the state of the evidence, by no stretch of legal logic can it be plausibly maintained, factually or legally, that the RUF was an "Occupying Power or Force" in Kailahun District. *It was certainly not a foreign armed force; nor did it qualify as a foreign Power or State. To hold otherwise, would fly in the face of the law given the non-international character of the conflict.* Indeed, it is conceded, as stated in the Main Judgment, that as the RUF stronghold, Kailahun District was organised in a more static way, combining territorial defence capability, but it was still an organised rebel administration not invested with the legal

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[86] Transcript of 25 October 2005, TF1-078, p. 94.

[87] See Michal N. Schmitt, *The Law of Belligerent Occupation* in Crimes of War Project, April 15, 2003, ICRE, Occupation and international humanitarian law: questions and answers, 10/2/2009 http:/www.icre.org/web/eng/siteeno.nsf/html/634kfc, Michel Deyra, *The Law in Occupied Territories*, Doctrine #04, September 2004.

attributes under international law of a foreign State or Power. For this reason, despite the theoretical attractiveness of the Defence legal submissions on this issue and the appeal to the Bench for judicial creativity and innovativeness, I very strongly endorse the conclusion reached in the Main Judgment that these submissions are misconceived, and I would add, fundamentally flawed.

105. In underscoring the importance of the conclusion in the Main Judgment on this issue, let me here take the liberty of reproducing, for the sake of emphasis, in its entirety, the succinct characterisation of the type of situation depicted by the evidence adduced by the Defence for the First Accused, by the ICTY Appeals Chamber in the Case of *US v. Pohls and Others*,[88] already cited in the Main Judgment. It reads as follows:

> Slavery may even be without torture. Slaves may be well fed, well clothed, and comfortably housed, but they are still slaves if without lawful process they are deprived of their freedom by forceful restraint. We might eliminate all proof of ill-treatment, overlook the starvation, beatings, and other barbarous acts, but the admitted fact of slavery – compulsory uncompensated labour – would still remain. There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment is still servitude.[89]

106. Based on the foregoing reasoning, the claim, therefore, that the RUF was an "Occupying Force", implicating the rights and responsibilities of a belligerent authority under international humanitarian law, is not only a fanciful defence but also a legal fiction.

10. Conclusion

107. I, accordingly, reaffirm my concurrence with the verdict in the Main Judgement of the Chamber in respect of each Count charged in the Indictment.

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[88] Judgment of 3 November 1947, reprinted in *Trials of War Criminals Before Nuemberg Military Tribunals Under Control Council*, No. 10, Vol. 5 (1997) 958 at p. 970.

[89] Examining the RUF ideology in action through a clear judicial lens, the inference is irresistible that in reality, it bears a close resemblance, in some respects, to "Animalism" and its totalitarian dictatorship depicted by George Orwell in his classic satirical novel, *Animal Farm*.

Delivered on 25 February 2009 in Freetown, Sierra Leone.

Hon. Justice Bankole Thompson

[Seal of the Special Court for Sierra Leone]

ANNEX A: LIST OF ABBREVIATIONS

2 I/C	second in command
AC	Appeals Chamber
Accused	Issa Hassan Sesay, Morris Kallon and Augustine Gbao
AFRC	Armed Forces Revolutionary Council
aka	also known as
APC	All Peoples Congress
Art.	Article
BBC	British Broadcasting Corporation
BFC	Battle Field Commander
BFI	Battle Field Inspector
BGC	Battle Group Commander
CDF	Civil Defence Forces
CDF case	Prosecutor v. Norman, Fofana and Kondewa (SCSL-04-14-T)
CIC	Commander in Chief
CO	Commanding Officer
Col	Colonel
Common Article 3	Article 3 common to the four Geneva Conventions of 1949
CS	Closed Session, reference to transcripts and testimony led in closed session for the purpose of witness protection.
DAG	Gbao Defence Witness
DDR	Disarmament, Demobilisation and Reintegration
Defence	Defence for the Accused
DIS	Sesay Defence Witness

DMK	Kallon Defence Witness
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
Fn.	footnote
G1, G2, G3, G4, G5	
HRW	Human Rights Watch
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
IDU	Internal Defence Unit
Indictment	Corrected Amended Consolidated Indictment in Prosecutor v. Sesay, Kallon and Gbao, dated 2 August 2006
Inter-Am. C.H.R.	Inter-American Commission of Human Rights
IO	Intelligence Office
JCE	Joint Criminal Enterprise
JPK	Johnny Paul Koroma (Senior AFRC Commander)
JSB	Joint Security Board
JSBI	Joint Security Board of Investigations
KENBATT	Kenyan Battalion of UNAMSIL peacekeepers
Le	Leones (currency of Sierra Leone)

MILOB	Military Observers attached to UNAMSIL
Mosquito	Nickname of Sam Bockarie
MP	Military Police
NCDDR	National Committee for Disarmament, Demobilisation and Reintegration
NGO	Non-governmental organisation
NPFL	National Patriotic Front of Liberia
NPRC	National Provisional Ruling Council
NPWJ	No Peace Without Justice, NGO
p., pp.	Page, pages
para., paras	paragraph
PTSD	Post-Traumatic Stress Disorder
QRC	Quick Reaction Company (component of UNAMSIL)
RPG	Rocket-Propelled Grenade
ROE	Rules of Engagement
RUF	Revolutionary United Front
RUFP	Revolutionary United Front Party
SBU	Small Boys Unit
SGU	Small Girls Unit
SLA/ex-SLA	Sierra Leone Army
SLBS	Sierra Leone Broadcasting Station
SLPP	Sierra Leone Peoples Party
Special Court	Special Court for Sierra Leone
ss.	Sections
Statute	Statute of the Special Court for Sierra Leone

STD	Sexually transmitted disease
STF	Special Task Force
TC	Trial Chamber
TF1	Prosecution Witness
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone
UNOMSIL	United Nations Observer Mission in Sierra Leone
WAC	Women's Auxiliary Corps
WVS	Witness and Victims Section of the Special Court
ZAMBATT	Zambian Battalion of UNAMSIL peacekeepers

ANNEX B: PROCEDURAL HISTORY

1. Pre-Trial

1.1. Arrest and Initial Appearance

1. On 10 March 2003, Issa Hassan Sesay and Morris Kallon were arrested in Sierra Leone and transferred to the custody of the Special Court.[1] The initial Indictments against Sesay and Kallon were confirmed by Hon. Justice Thompson on 7 March 2003 and charged each Accused with 17 counts of crimes against humanity, war crimes and other serious violations of international humanitarian law. Both Sesay and Kallon pleaded not guilty to all counts at their initial appearances before Hon. Justice Itoe on 15 March 2003 and on 15, 17 and 21 March 2003, respectively.

2. On 14 March 2003, a formal request was made by the Prosecutor to the authorities of Sierra Leone for the arrest and detention of Augustine Gbao[2] and Gbao was arrested by Sierra Leonean authorities and held in their custody. On the 18 March 2003, Hon. Justice Itoe ordered that Gbao be transferred to the Detention Facility of the Special Court and kept in provisional detention for a maximum of 30 days.[3] The initial Indictment charged him with 17 counts of crimes against humanity, war crimes and other serious violations of international humanitarian law and was confirmed by Hon. Justice Thompson on 16 April 2003.[4] Gbao pleaded not guilty to all counts at his initial appearances before Hon. Justice Thompson on 25 April 2003.

1.2. Indictment

3. In a preliminary motion, the Sesay Defence raised several challenges to the form of the Indictment.[5] The Chamber found the Indictment to be in substantial compliance with Article

[1] *Prosecutor v. Sesay*, SCSL-03-05-I, Warrant of Arrest and Order for Transfer and Detention, 7 March 2003 and *Prosecutor v. Kallon*, SCSL-03-07-I, Warrant of Arrest and Order for Transfer and Detention, 7 March 2003.
[2] *Prosecutor v. Gbao*, SCSL-03-09-I, Request for Transfer and Provisional Detention under Article 40*bis* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, 14 March 2003.
[3] *Prosecutor v. Gbao*, SCSL-03-09-PD, Order for Transfer and Provisional Detention Pursuant to Rule 40*bis*, 18 March 2003.
[4] *Prosecutor v. Gbao*, SCSL-03-09-I, Indictment and Order Approving the Indictment, 16 April 2003.
[5] *Prosecutor v. Sesay*, SCSL-03-05-I, Preliminary Motion for Defects in the Form of the Indictment, 23 June 2003.

17(4)(a) of the Court's Statute and Rule 47(c) of the Rules as to its formal validity, and refused to dismiss the Indictment. The Chamber, did, however, order the Prosecution to file a Bill of Particulars.[6]

1.3. Bail

4. The Kallon Defence made an application for bail on 29 October 2003.[7] Hon. Justice Boutet dismissed the application holding that the allegations against the Accused were of utmost gravity and seriousness and that if he were released within the local community this could well undermine his own safety and his appearance for the trial.[8] Leave to appeal was granted,[9] but when the Defence did not file the appeal in time, the Appeals Chamber refused to consider the merits of the application.[10]

5. The Sesay Defence made an application for bail on 4 February 2004[11] which was denied by Hon. Justice Boutet on the basis that he was not satisfied that the Accused would appear for trial.[12] Leave to appeal was granted[13] and the Appeals Chamber found that the Trial Judge had not erred in his balancing of the relevant factors and dismissed the appeal on 14 December 2004.[14]

1.4. Request by the Truth and Reconciliation Commission

6. The Truth and Reconciliation Commission for Sierra Leone ("TRC") requested a public hearing with Gbao on the basis that he had played a key role in the conflict in Sierra

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[6] *Prosecutor v. Sesay*, SCSL-03-05-I, Bill of Particulars, 3 November 2003.
[7] *Prosecutor v. Kallon*, SCSL-03-07-T, Motion of Morris Kallon for Bail and Request for Hearing, 29 October 2003.
[8] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Motion for Morris Kallon for Bail, 23 February 2004.
[9] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on Application for Leave to Appeal Against Refusal of Bail, 23 June 2004.
[10] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-AR65, Decision on Appeal against the Decision of the Trial Chamber Refusing the Application for Bail by Morris Kallon, 17 September 2004.
[11] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Application of Issa Sesay for Provisional Release, 4 February 2004.
[12] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on Application of Issa Sesay for Provisional Release, 1 April 2004.
[13] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Application for Leave to Appeal Against Refusal of Bail, 28 July 2004.
[14] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-AR65, Sesay – Decision on Appeal against Refusal of Bail, 14 December 2004.

Leone.[15] On 3 November 2003, Hon. Justice Thompson denied the request, holding that such a hearing could endanger victims and witnesses as well as the fair trial of the Accused.[16]

7. The TRC and Gbao filed an appeal against this Decision.[17] After being notified of the Appeals Chamber's decision on the same issue in the *Norman* case,[18] Counsel for Gbao indicated by email that his client did not intend to proceed with the appeal. The Appeals Chamber dismissed the appeal.[19]

1.5. Preliminary Motions on Jurisdiction

1.5.1. Constitutionality

8. Counsel for Kallon filed a preliminary motion before the Trial Chamber arguing that the Special Court was unconstitutional and that it was an illegal and *ultra vires* institution lacking the jurisdiction to try Kallon for any of the counts contained in the Indictment. The Chamber referred the motion to the Appeals Chamber pursuant to Rule 72(E) of the Rules.[20]

9. The Appeals Chamber held that it had jurisdiction to decide on the lawfulness and validity of its creation. The Chamber held that the Special Court does not form part of the judiciary of Sierra Leone and thus its establishment did not violate the Constitution and that the Government of Sierra Leone had authority to enter into the agreement establishing the Special Court. The Appeals Chamber also found that as the crimes charged existed under

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[15] *Prosecutor v. Gbao*, SCSL-03-09-PT, Request AAB 002 Submitted by the Truth and Reconciliation Committee for Sierra Leone to Conduct a Public Hearing with Mr. Augustine Ato Bao, in Terms of the Special Court for Sierra Leone Practice Direction issued on 9 September 2003, 10 October 2003. See also: *Prosecutor v. Gbao*, SCSL-03-09-PT, Practice Direction on the Procedure Following a Request by a State, the Truth and Reconciliation Commission, or other Legitimate Authority to take a Statement from a Person in the Custody of the Special Court for Sierra Leone, 9 September 2003.

[16] *Prosecutor v. Gbao*, SCSL-03-09-PT, Decision on the Request by the Truth and Reconciliation Commission of Sierra Leone to Conduct a Public Hearing with Augustine Gbao, 3 November 2003.

[17] *Prosecutor v. Gbao*, SCSL-03-09-PT, Appeal by the Truth and Reconciliation Commission for Sierra Leone (TRC or 'The Commission') and Augustine Gbao against the Decision of His Honourable Judge Thompson delivered on 3rd November 2003 to deny the TRC's Request to Hold a Public Hearing with Gbao, 5 November 2003.

[18] *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on Appeal By the Truth and Reconciliation Commission for Sierra Leone ('TRC' or 'The Commission') and Chief Samuel Hinga Norman JP Against the Decision of His Lordship, Mr Justice Bankole Thompson Delivered on 30 October 2003 to Deny the TRC's Request to Hold a Public Hearing with Chief Samuel Hinga Norman JP, 28 November 2003.

[19] *Prosecutor v. Gbao*, SCSL-03-09-PT, Decision on Appeal by the Truth and Reconciliation Commission (TRC) and Accused Against the Decision of Hon. Judge Bankole Thompson Delivered on November 2003 to Deny the TRC's Request to Hold a Public Meeting with Augustine Gbao, 7 May 2004.

[20] *Prosecutor v. Kallon*, SCSL-03-07-PT, Order Pursuant to Rule 72(E) - Defence Preliminary Motion Based on Lack of Jurisdiction: Establishment of Special Court Violates Constitution of Sierra Leone, 17 September 2003.

customary international law at the time of their alleged commission, there was no violation of the principle of *nullum crimen sine lege*.[21]

1.5.2. Amnesty provided by Lomé Accord

10. The jurisdiction of the Special Court was also challenged by Counsel for Kallon in another preliminary motion on the basis of the amnesty provisions in the Lomé Peace Accord of 7 July 1999.[22] The Trial Chamber referred the motion to the Appeals Chamber for determination.[23]

11. The Appeals Chamber found, *inter alia*, that the Lomé Peace Agreement was not a treaty and that the rights and obligations it created were to be regulated by the domestic laws of Sierra Leone. Consequently, any amnesty granted by the provision had no effect on the liability of the Accused to be prosecuted in an international tribunal for international crimes such as those contained in Articles 2 and 4 of the Statute of the Special Court. The Appeals Chamber dismissed the motion.[24]

1.5.3. Invalidity of the Special Court Agreement

12. Counsel for Gbao filed a preliminary motion alleging the invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of the Special Court for Sierra Leone.[25] The Trial Chamber referred the motion to the Appeals

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[21] *Prosecutor v. Kallon*, SCSL-04-15-AR72(E), *Norman*, SCSL-04-14-AR72(E), *and Kamara*, SCSL-04-16-AR72(E), Decision On Constitutionality and Lack of Jurisdiction, 13 March 2004. While the three Accused had filed separate motions, the Appeals Chamber found that it was logical to deal with them in one comprehensive decision (para 1).

[22] *Prosecutor v. Kallon*, SCSL-03-07-PT, Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by Lomé Accord, 16 June 2003.

[23] *Prosecutor v. Kallon*, SCSL-03-07-PT, Order Pursuant to Rule 72(E): Defence Preliminary Motion Based on Lack of Jurisdiction: Establishment of Special Court violates Constitution of Sierra Leone, 17 September 2003.

[24] *Prosecutor v. Kallon*, SCSL-04-15-AR72(E), *and Kamara*, SCSL-04-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, 13 March 2004. The two Accused filed separate motions that were dealt with together by the Appeals Chamber.

[25] *Prosecution v. Gbao*, SCSL-03-09-PT, Preliminary Motion on the Invalidity of the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, 6 November 2003.

Chamber[26] who upheld its previous ruling in the Lomé Amnesty Decision and dismissed the motion.[27]

1.5.4. Right to Appeal

13. Counsel for Kallon also joined a motion filed by Counsel for Norman[28] seeking to challenge the lawfulness of the referrals by the Trial Chamber of the preliminary motions to the Appeals Chamber.[29] At the same time, Counsel for Kallon filed a similar motion with the Appeals Chamber and sought the stay of preliminary motions until the issuance of the Trial Chamber's decision.[30]

14. The Appeals Chamber refused to grant a stay on the basis that it would cause considerable expense and delay. Despite the fact that the Defence had sought leave to withdraw the motion, the Appeals Chamber ruled on the motion and upheld the lawfulness of Rule 72.[31] The Trial Chamber dismissed the motions on the basis that it had been deprived of jurisdiction to pronounce on the issues by virtue of the Appeals Chamber decision.[32]

1.6. Motion for Disqualification of Hon. Justice Robertson

15. Counsel for Sesay filed a motion before the Appeals Chamber requesting that Hon. Justice Robertson withdraw from the case, or that if he did not, that the remaining members of the Chamber disqualify him from sitting, on the basis that he had shown bias against both the RUF and the AFRC in statements made in his book entitled *Crimes Against Humanity-The Struggle for Global Justice.*[33]

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[26] *Prosecution v. Gbao*, SCSL-03-09-PT, Order Pursuant to Rule 72(E): Defence Preliminary Motion on the Invalidity of the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, 3 December 2003.

[27] *Prosecutor v. Gbao*, SCSL-04-15-AR72(E), Decision on Preliminary Motion on the Invalidity of the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, 25 May 2004.

[28] *Prosecutor v. Norman*, SCSL-03-08-PT, Motion on Denial of Right of Appeal, 2 October 2003.

[29] *Prosecutor v. Kallon*, SCSL-03-07-PT, Motion on Denial of Right of Appeal, 8 October 2003.

[30] *Prosecutor v. Kallon*, SCSL-03-07-PT, Application to Stay Determination of All Preliminary Motions-Denial of Right of Appeal, 8 October 2003.

[31] *Prosecutor v. Norman*, SCSL-03-08-PT, *Prosecutor v. Kallon*, SCSL-03-07-PT, *Prosecutor v. Gbao*, SCSL-03-09-PT, Decision on the Applications for a Stay of Proceedings and Denial of Right to Appeal, 4 November 2003.

[32] *Prosecutor v. Norman*, SCSL-03-08-PT, *Prosecutor v. Kallon*, SCSL-03-07-PT, Decision on the Defence Motion on the Denial of Right to Appeal, 7 November 2003.

[33] *Prosecutor v. Sesay*, SCSL-03-05-PT, Defence Motion Seeking the Disqualification of Judge Robertson from the Appeals Chamber, 27 February 2004. In its Response, the Prosecution agreed that the material presented could

16. The remaining Judges of the Appeals Chamber found that as Hon. Justice Robertson had declined to withdraw, the other Judges would determine the issue of disqualification pursuant to Rule 15(B) of the Rules. The Chamber held that a reasonable man would apprehend bias on the part of Hon. Justice Robertson and that he ought to be disqualified from motions involving alleged members of the RUF whose decisions are pending and cases involving the RUF if and when they come before the Appeals Chamber.[34]

1.7. Witness Protection

17. In the case of each of the Accused, the Trial Chamber granted Prosecution pre-trial motions seeking immediate protective measures for its witnesses and for non-public disclosure of their identities. These measures included *inter alia* the use of pseudonyms, the non-disclosure of identifying information to the public and a regime of rolling disclosure in which the Prosecution was required to disclose identifying information of witnesses to the Defence 42 days prior to their testimony at trial.[35] Applications for leave to appeal these decisions were denied.[36]

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lead a reasonable observer, properly informed, to apprehend bias (*Prosecutor v. Sesay, Gbao and Kallon*, SCSL-04-15-PT, Prosecution Response to the Defence Motion Seeking Disqualification of Judge Robertson from the Appeals Chamber, 1 March 2004). On 5 March 2004, the Defence for Kallon and Gbao filed a joint response supporting the motion filed by Sesay (*Prosecutor v. Sesay, Gbao and Kallon*, SCSL-04-15-PT, Kallon and Gbao's Joint Response to Sesay's Motion Seeking the Disqualification of Judge Robertson from the Appeals Chamber, 5 March 2004).

[34] *Prosecutor v. Sesay*, SCSL-04-15-AR15, Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber, 13 March 2004. A later application for clarification of this decision was dismissed: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on Motion Seeking Clarification of the Decision on Disqualification of Justice Robertson from the Appeals Chamber, 25 May 2004.

[35] *Prosecutor v. Sesay*, SCSL-03-05-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non Public Disclosure, 23 May 2003; *Prosecutor v. Kallon*, SCSL-03-07-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non Public Disclosure, 23 May 2003; and *Prosecution v. Gbao*, SCSL-03-09-PT, Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non Public Disclosure, 10 October 2003.

[36] *Prosecutor v. Sesay*, SCSL-03-05-PT, Order on the Defence Application for Reconsideration of and/or Leave to Appeal the "Decision on the Prosecution's Motion for Protective Measures for Victims and Witnesses and for Non Public Disclosure", 16 July 2003; *Prosecutor v. Kallon*, SCSL-03-07-PT, Decision on the Defence Application for Leave to Appeal the Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 10 December 2003. Prior to the rendering of these decisions, the Trial Chamber granted Prosecution applications in the *Sesay* and *Kallon* cases to allow disclosure to be made to the Registry and then sealed until the appropriate protective measures were in place: *Prosecutor v. Sesay*, SCSL-03-07-PT, Decision on the Prosecution Motion to Allow Disclosure to the Registry and to Keep Disclosed Material under Seal until Appropriate Protective Measures are in Place, 17 April 2003; *Prosecutor v. Kallon*, SCSL-03-07-PT, Decision on the Prosecution Motion to Allow Disclosure to the Registry and to Keep Disclosed Material under Seal until Appropriate Protective Measures are in Place, 17 April 2003

1.8. Joinder and Consolidated Indictment

1.8.1. Joinder

18. All of the Accused before the Special Court were initially charged with individual indictments. The Prosecution applied for the joint trial of the Accused Sesay, Kallon and Gbao of the RUF, and Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, of the AFRC, claiming that their alleged acts formed part of a common scheme, strategy or plan.[37]

19. In its Decision of 27 January 2004, the Chamber stated that it had the discretion to grant the joinder of indictments after weighing the overall interests of justice and the rights of the Accused. The Chamber found that, because the RUF and the AFRC were two distinct groups, a joint trial of both groups would raise potential conflicts in Defence strategy and the possibility of mutual recrimination which might derogate from the rights to which each Accused was entitled in the context of separate trials. The Chamber thus ordered a joint trial of Sesay, Kallon and Gbao of the RUF, and a separate and joint trial of Brima, Kamara and Kanu of the AFRC. The Chamber ordered that two consolidated indictments be prepared and that the Registry assign them new case numbers.[38] The application for leave to appeal was dismissed.[39]

1.8.2. The Consolidated Indictment and Amendment

20. The Consolidated Indictment, filed on 5 February 2004, charged Sesay, Kallon and Gbao with 17 counts based on the individual initial Indictments.[40] When the Kallon Defence sought to quash the Indictment on the basis that it contained new charges,[41] the Trial Chamber ordered that the Prosecution file a precise indication of the changes made to the

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[37] *Prosecutor v. Sesay* (SCSL-03-05-PT), *Prosecutor v. Brima* (SCSL-03-06-PT), *Prosecutor v. Kallon* (SCSL-03-07-PT), *Prosecutor v. Gbao* (SCSL-03-09-PT), *Prosecutor v. Kamara* (SCSL-03-10-PT) and *Prosecutor v. Kanu* (SCSL-03-13-PT), Prosecution Motion for Joinder, 9 October 2003.

[38] *Prosecutor v. Sesay* (SCSL-03-05-PT), *Brima* (SCSL-03-06-PT), *Kallon* (SCSL-03-07-PT), *Gbao* (SCSL-03-09-PT), *Kamara* (SCSL-03-10-PT), *Kanu* (SCSL-03-13-PT), Decision and Order on Prosecution Motions for Joinder, 27 January 2004 (hereinafter "Joinder Decision"), and Corrigendum, 28 January 2004. As a result of this, the case against Sesay, Kallon and Gbao was assigned the case number of SCSL-04-15 and the case against Brima, Kamara and Kanu was assigned the case number of SCSL-04-16.

[39] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on Prosecution's Application for Leave to an Interlocutory Appeal Against the Decision on the Prosecution Motions for Joinder, 13 February 2004.

[40] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Indictment, 5 February 2004.

[41] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Motion for Quashing of Consolidated Indictment, 10 February 2004.

previous indictments.[42] The Trial Chamber held that the additional allegations in the Bills of Particulars had put all three Accused on notice as to additional incidents or events that the Prosecution might be adducing evidence about at the trial.[43]

21. The Prosecution filed a request for leave to amend the Indictment to add a new count of "Crimes against Humanity: Other Inhumane Act (forced marriage)" and to make other minor modifications.[44] The Chamber allowed the amendments[45] and the Amended Consolidated Indictment was filed on 13 May 2004.

22. The Trial Chamber ordered the further appearance of Sesay, Kallon and Gbao on the new charge of "Crimes against Humanity: Other Inhumane Acts (forced marriage)" as contained in Count 8 of the Amended Consolidated Indictment.[46] The Accused appeared before Designated Judge Boutet on 17 May 2004 and, after they refused to plead, pleas of not guilty were entered for the additional count.[47]

1.8.3. Concurrent Presentation of Evidence for RUF and AFRC Cases

23. After leave to appeal the Chamber's Joinder Decision was denied, the Prosecution sought the concurrent hearing of evidence common to the RUF and AFRC cases.[48] The Chamber dismissed the motion on the basis that the concurrent hearing of evidence was

[42] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Order to Submit Indication of Specific Changes to the Indictments, 26 February 2004. *See: Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Indication of Specific Changes to Indictments, 1 March 2004.

[43] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on Motion for Quashing of Consolidated Indictment, 21 April 2004.

[44] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT. Request for Leave to Amend the Indictment, 9 February 2004.

[45] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004.

[46] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Scheduling Order for the Further Appearance of the Accused on the Amended Consolidated Indictment, 12 May 2004.

[47] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Transcript of 17 May 2004, pp. 19-20, 22, 23.

[48] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Prosecution Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT, 30 April 2004.

conceptually irreconcilable with the joint separate trials it had ordered.[49] An application for leave to appeal was denied.[50]

1.9. Judicial Notice

24. On 24 June 2004, the Trial Chamber granted in part a Prosecution application to take judicial notice of certain facts and documents. The Chamber found that it could take judicial notice of those facts that were relevant and not subject to reasonable dispute and that did not concern any Legal Findings or attest to the criminal responsibility of any Accused.[51]

25. Subsequent to an Appeals Chamber decision which overturned aspects of the Trial Chamber's judicial notice decision in the CDF case,[52] the Chamber modified its rulings on judicial notice in a Consequential Order.[53] A list of the judicially noticed facts and documents is appended to the Judgement at Annex D.

1.10. Trial Preparation Filings, and Pre-Trial Briefs

26. On 13 February 2004, the Trial Chamber issued an Order for Filing Pre-Trial Briefs.[54] The Chamber found that the Prosecution's filed Pre-Trial Brief did not sufficiently address factual issues and did not provide sufficient notice of the Prosecution's case against each of the individual Accused and ordered the Prosecution to file a Supplemental Pre-Trial Brief.[55] The Supplemental Pre-Trial Brief was filed on 21 April 2004.[56]

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[49] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on the Prosecution Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT, 11 May 2004.

[50] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on Prosecutor's Application for Leave to File an Interlocutory Appeal Against the Decision on the 'Prosecution's Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT', 1 June 2004.

[51] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 24 June 2004.

[52] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana - Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", 16 May 2005.

[53] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Consequential Order Regarding Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 24 May 2005.

[54] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Order for Filing Pre-Trial Briefs (Under Rules 54 and 73 *bis*), 13 February 2004.

[55] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Order to the Prosecution to File a Supplemental Pre-Trial Brief, 30 March 2004. *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Order to Extend the Time for Filing the Prosecution to File a Supplemental Pre-Trial Brief, 2 April 2004

[56] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Prosecution Supplemental Pre-Trial Brief Pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 30 March 2004 as amended by Order to Extend the Time for Filing the Prosecution to File a Supplemental Pre-Trial Brief of 2 April 2004, 21 April 2004.

27. The Chamber ordered that the Defence Pre-Trial Briefs be filed two weeks before the commencement of trial.[57] The Sesay Defence filed a Pre-Trial Brief on 18 June 2004,[58] the Kallon Defence filed a Pre-Trial Brief on 1 July 2004[59] and Counsel for Gbao filed a revised Pre-Trial Brief on 6 July 2004.[60]

1.11. Disclosure

28. The Trial Chamber issued an order to the Prosecution to file disclosure materials and other materials in preparation for the commencement of trial by 26 April 2004. The Order required the Prosecution to file *inter alia*, a list of all the witnesses the Prosecution intended to call, a summary of their evidence, a list and copies of all exhibits the Prosecution intended to rely on, a compliance report indicating the disclosure of witness statements or summaries and a chart indicating the primary evidence intended to prove the allegations in each paragraph of the Indictment. It also ordered the Prosecution to disclose all witness statements that had not already been provided.[61]

29. After a series of confidential motions and decisions, the Trial Chamber ordered the disclosure of the transcripts of Prosecution interviews with the Accused Sesay to the other Accused.[62]

1.12. Status and Pre-Trial Conferences

30. Status Conferences were held on 2 and 3 March 2004 and on 23 June 2004 and a Pre-Trial Conference pursuant to Rule 73*bis* was held on 29 April 2004.

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[57] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Revised Order for the Filing of Pre-Trial Briefs, 12 March 2004.
Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-PT, Order for Filing Pre-Trial Briefs (Under Rules 54 and 73 *bis*), 13 February 2004 had required the Defence to file Pre-Trial Briefs on 19 March 2004.
[58] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Issa Sesay's Pretrial Brief, 18 June 2004.
[59] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Morris Kallon – Defence Pretrial Brief, 1 July 2004.
[60] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Revised Defence Pre-Trial Brief on Behalf of Augustine Bao, 6 July 2004.
[61] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Order to the Prosecution to file Disclosure Materials and Other Materials in Preparation for the Commencement of Trial, 1 April 2004.
[62] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Confidential Decision on Motion to Prevent Prosecution from Serving Certain Materials to Other Accused until Admissibility Determined, 15 June 2004. *See also: Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Confidential Order to Identify Redactions and to Specify the Timeline for Full Disclosure, 29 April 2004.

2. Trial Phase

2.1. Overview

31. In order to allow the Trial Chamber to sit on both the CDF and RUF trials at the same time, the RUF trial proceeded in trial sessions lasting between four to six weeks that alternated with the CDF trial until the conclusion of the CDF trial. A status conference was held prior to the commencement of each trial session.[63]

32. The Prosecution case was presented over eight trial sessions[64] and lasted 182 trial days before concluding on 2 August 2006. The Prosecution called 85 witnesses and one additional witness was called at the behest of the Defence. 190 exhibits were admitted into evidence.

33. The presentation of the Defence case began on 3 May 2007. The Sesay Defence case commenced on 3 May 2007 and continued until 13 March 2008. One additional witness and one common witness with the Gbao Defence were subsequently heard on behalf of the Sesay Defence, bringing the total number of Sesay Defence witnesses to 59, including the Accused Sesay himself who testified for 21 days.

34. The Kallon Defence case started on 11 March 2008[65] and continued until 5 June 2008. A total of 22 witnesses testified for the Kallon Defence, including the Accused Kallon himself who testified for 4 days. Three of the Kallon witnesses were common with the Sesay Defence.

35. The Gbao Defence case opened on 2 June 2008 and closed on 24 June 2008. A total of eight witnesses testified for the Gbao Defence, including an expert witness common with the Sesay Defence.

36. In all, the Defence case was heard over four trial sessions[66] totalling 126 trial days from 3 May 2007 to 24 June 2008. Excluding the *voir dire* proceedings regarding the admissibility of

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[63] Status conferences were held on 23 June 2004, 1 October 2004, 10 January 2005, 5 April 2005, 4 July 2005, 1 November 2005, 27 February 2006, 19 June 2006, 27 October 2006 (Defence case preparation), 2 May 2007, 26 September 2007, 27 November 2007, 10 January 2008, and 12 March 2008.

[64] First session: 5-29 July 2004; Second session: 4-29 October 2004; Third session: 11 January - 4 February 2005; Fourth session: 6 April - 17 May 2005; Fifth session: 5 July - 3 August 2005; Sixth Session: 2 November - 8 December 2005; Seventh session: 2 March - 6 April 2006; Eighth session: 20 June - 2 August 2006.

[65] Witnesses common to the Sesay and Kallon Defence testified during the Eleventh session. The Kallon Defence case opened during the Twelfth session on 11 April 2008 and continued until 5 June 2008.

statements of the Accused Sesay, a total of 85 Defence witnesses testified and 205 exhibits were tendered into evidence during the Defence case.

2.1.1. Withdrawal of Counsel

37. After the Trial Chamber prevented the Accused Gbao from making a political statement on 6 July 2004, Gbao made an oral application to withdraw his counsel on the grounds that Gbao did not recognize the legitimacy of the Court.[67] The Chamber found that this reason could not meet the Rule 45(E) standard of demonstrating exceptional circumstances in order to withdraw counsel and denied the application.[68] The Majority of the Chamber granted leave to appeal this decision.[69]

38. The appeal sought that Gbao be accorded his right of self-representation and not to be represented by counsel. The Appeals Chamber upheld the Trial Chamber's decision and found that the Accused did not have the right under Article 17(d)(4)(iii) of the Statute to decide whether or not to have counsel assigned to him after refusing to exercise his rights under Article 17(d)(4)(i) and (ii) to defend himself or obtain legal assistance of his choosing.[70]

39. On 27 March 2006, Counsel for Gbao, Andreas O'Shea, made an application for permission to withdraw from the case, citing exceptional circumstances, namely, a breakdown in communication and trust between Gbao and himself, under Rule 45(E).[71] The Chamber dismissed the application to withdraw based on concerns for the fairness and expeditiousness of the trial proceedings and appointed both Counsel for Gbao, Andreas O'Shea and John Cammegh, to represent him as Court Appointed Counsel.[72]

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[66] Ninth session: 3 May - 28 June 2007; Tenth session: 4 October - 6 December 2007; Eleventh session: 10 January - 13 March 2008; Twelfth session: 11 April - 5 June 2008.

[67] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript of 6 July 2004, p. 14 and following.

[68] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Gbao - Decision on Application to Withdraw Counsel, 6 July 2004.

[69] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Application for Leave to Appeal Gbao - Decision on Application to Withdraw Council, 4 August 2004. *See also* Dissenting Opinion of Judge Thompson on Decision on Application for Leave to Appeal Gbao - Application to Withdraw Counsel, 4 August 2004.

[70] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-AR73, Gbao - Decision on Appeal Against Decision on Withdrawal of Counsel, 23 November 2004, paras 57 and 61.

[71] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript of 27 March 2006, p. 2 *et seq.*

[72] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Application by Counsel for the Third Accused to Withdraw from the Case, 5 April 2006. The Chamber issued its reasoned decision on 19th June 2006 (*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for the Decision on Application by Counsel for the Third Accused to Withdraw from the Case, 19 June 2006).

40. On 20 June 2007, Andreas O'Shea again sought permission to withdraw from the case on the basis of an irreconcilable breakdown in confidence between himself and the Accused, which was confirmed by Gbao and Mr. Cammegh. The Trial Chamber was satisfied that this complete and irreversible breakdown in trust and confidence between Gbao and Mr. O'Shea constituted exceptional circumstances justifying his withdrawal. The Chamber confirmed that John Cammegh would serve as Lead Counsel and continue as Court Appointed Counsel for Gbao.[73]

2.1.2. Absence of the Accused

41. The Accused Gbao refused to attend Court from 7 July 2004. The Trial Chamber held that Gbao, by refusing to appear before the Court, had expressly waived his right to be present at the trial and that the trial should proceed pursuant to Rule 60(A)(i). The Court also ordered that the Gbao Defence would continue to represent the Accused and that the Chief of the Detention Facility should maintain a daily record of Gbao's waiver.[74] Gbao began to re-attend trial proceedings on 27 February 2006[75] and continued to attend until the conclusion of the trial.

42. On 12 January 2005, the Trial Chamber ordered that the Accused Sesay and Kallon had waived their rights to attend the trial proceedings by refusing to attend those proceedings on that day.[76] In its written reasons, the Chamber ordered the trial to proceed pursuant to Rule 60, ordered the Sesay and Kallon Defence teams to continue representing the Accused in court, and ordered the Chief of the Detention Facility to maintain a daily record of the waivers of the Accused.[77] Sesay and Kallon recommenced attending trial proceedings on 31 January 2005.[78] Sesay occasionally waived his right to be present during trial proceedings due to health

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[73] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for Decision on Application for Third Accused to Dispense with the Mandate of Court Appointed Counsel, Mr. Andreas O'Shea, 6 December 2007. See also oral ruling, Transcript of 22 June 2007, p. 91.

[74] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Issue of the Refusal of the Third Accused, Augustine Gbao, to Attend Hearing of the Special Court for Sierra Leone on 7 July 2004 and Succeeding Days, 12 July 2004, para 12.

[75] Transcript of 27 February 2006, pp. 2 and 5.

[76] Transcript of 12 January 2005, pp. 17-18.

[77] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Issue of the Refusal of the Accused Sesay and Kallon to Appear for Their Trial, 19 January 2005.

[78] Transcripts of 31 January 2005, p. 2.

concerns. On the occasions where his Counsel sought an adjournment as he felt that it was important that Sesay be present, the Chamber granted such requests.

2.1.3. Amendment to Indictment

43. On 1 October 2004, the Kallon Defence filed a motion alleging that Kallon had not been properly served with and/or arraigned on the Consolidated Indictment or the Amended Consolidated Indictment.[79] The Majority Decision of the Trial Chamber denied the motion in its entirety on the basis that Kallon was stopped from raising concerns regarding the service of the Consolidated Indictment which was not a new indictment and that the other issues raised were dismissed as frivolous.[80] An application for leave to appeal the decision was dismissed.[81]

44. On 20 February 2006, the Prosecution applied to amend the Indictment, seeking to amend the timeframe applicable to paragraphs 48, 62, and 80 from between 14 February 1998 and 30 June 1998 to between 14 February 1998 and 31 January 2000. The Prosecution also sought leave to replace the word "from" with "between" in paragraph 31.[82] The Chamber granted the motion in part, ordering the change to paragraph 31 as non-contentious. The Chamber denied the motion in regard to paragraphs 48, 62, and 80, holding that such a change would be prejudicial to the Defence and represent a violation of the principle of equality of arms.[83]

45. On 2 August 2006, the Corrected Amended Consolidated Indictment was filed.[84]

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[79] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Motion on Issues of Urgent Concern to Morris Kallon, 1 October 2004.

[80] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Kallon – Decision on Motion on Issues of Urgent Concern to Morris Kallon, 9 December 2004, paras 23-26. *See also*: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Partially Dissenting Opinion of Hon. Justice Benjamin Mutanga Itoe on the Chamber Majority Decision of the 9th of December 2004 on the Motion on Issues of Urgent Concern to Morris Kallon, 7 April 2005.

[81] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Application by the Second Accused for Leave for Interlocutory Appeal Against the Majority Decision of the Trial Chamber of the 9th December 2004 on the Motion on Issues of Urgent Concern to the Accused Morris Kallon, 2 May 2005, paras 21-22.

[82] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Application for Leave to Amend Indictment, 20 February 2006.

[83] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Application for Leave to Amend Indictment, 31 July 2006, paras 33, 42-43 and 45. See also: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Partially Dissenting Opinion of Hon. Justice Benjamin Mutanga Itoe on the Chamber Decision on Prosecution Application for Leave to Amend Indictment, 31 July 2006.

[84] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Corrected Amended Consolidated Indictment, 2 August 2006.

2.1.4. Agreed Facts

46. Before the commencement of trial, the Prosecution submitted a proposed list of agreed facts to the Chamber, requesting the three Defence teams to respond to this list.[85] The Chamber issued a Decision on Co-operation between the Parties which encouraged the Parties to reach agreements on issues of fact and law and ordered them to make periodic reports to the Chamber.[86] These attempts were largely unsuccessful and resulted in only one agreement of fact between the Prosecution and the Sesay Defence.[87] On 9 November 2004, after a request by the Parties, the Chamber ended the requirement to make periodic reports but continued to encourage the Parties to co-operate.[88]

47. On 30 October 2006, the Chamber filed its Scheduling Order Concerning the Preparation and the Commencement of the Defence Case in which it ordered, *inter alia*, the Prosecution and the Defence to file joint statements of agreed facts and matters not in dispute.[89] Statements of agreed facts between the Defence and the Prosecution were filed for the Kallon Defence[90] and the Sesay Defence.[91] The Gbao Defence and the Prosecution did not agree to any facts.[92]

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[85] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecutor's Request to Admit, 3 March 2004.

[86] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Co-operation between the Parties, 16 June 2004.

[87] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Defence Response to Prosecutor's Request to Admit, 18 March 2004, para 6 (Kallon Defence); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Joint Statement to the Trial Chamber Pursuant to the Order of 16th June 2004, 1 July 2004 (Sesay and Gbao Defence); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Second Status Report Regarding Decision on Co-Operation Between the Parties Dated 16 June 2004, 16 July 2004; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Third Status Report Regarding Decision on Co-Operation Between the Parties Dated 16 June 2004, 2 August 2004 (agreement that Witness TF1-253's statements about one Colonel Sesay did not refer to the Accused); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Fourth Status Report Regarding Decision on Co-Operation Between the Parties Dated 16 June 2004, 7 September 2004;

[88] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order on Co-operation between the Parties, 9 November 2004.

[89] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Scheduling Order Concerning the Preparation and the Commencement of the Defence Case, 30 October 2006, para 3.

[90] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Confidential Kallon Defence Filing in Compliance with Scheduling Order Concerning the Preparation and Commencement of the Defence Case, 5 March 2007, Annex H. The Kallon Defence list of agreed facts was entered into evidence as Exhibit 342.

[91] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Response to Sesay Request for Agreement of Facts, 23 March 2007. The list of agreed facts is enumerated in paragraph 3. *See also: Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Defence Request for Agreement of Facts, 8 March 2007.

[92] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Response to Proposed Agreed Statement of Facts of the Third Accused, 8 March 2007; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Gbao – Joint Statement of Agreed Facts and Matters and Joint Statement of Contested Matters of Facts and Law, 5 March 2007, paras 5-8.

2.2. Prosecution Case

2.2.1. Witnesses

2.2.1.1. Witness Lists

48. At the beginning of the trial, the Trial Chamber ordered the Prosecution to identify from its filed Witness List separate lists of "core" witnesses that the Prosecution intended to call at trial and of "backup" that would only be called if it later became necessary. The Prosecution did so[93] and continued to file updated and reduced witness lists throughout the presentation of the Prosecution case.[94] The Trial Chamber found that as both the "core" and "back-up" lists formed a part of the Prosecution witness list, the Prosecution could move witnesses from their "back-up" witness list to their "core" witness list without leave of the Chamber.[95]

49. The Chamber also required the Prosecution to produce a copy of all witness statements to the Chamber one week before the witness's testimony[96] and to provide each Defence Team and the Trial Chamber with a list of the order it intends to call its witnesses to testify, 14 days prior to each trial session.[97]

50. During the presentation of the Prosecution case, the Prosecution brought several applications to add additional witnesses to its witness lists. In each case, the Trial Chamber

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[93] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-193, Materials Filed Pursuant to "Order to Prosecution to Produce Witness List and Witness Summaries", 12 July 2004. The Modified Witness List identified 173 "core" witnesses.

[94] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-284, Prosecution Renewed Witness List, 10 February 2005 (included both a reduced "core" witness list of 102 witnesses and a "back-up" witness list); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-319, Further Renewed Witness List Pursuant to Order to the Prosecution Concerning Renewed Witness List, 10 February 2005 (identified 98 "core" witnesses and a "back-up" witness list); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-370, Materials Filed Pursuant to Consequential Order to the Decision on Further Renewed Witness List Dated 13 April 2005, 10 February 2005 (included a "core" list of 101 witnesses after leave to add three additional witnesses was granted); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-486, Prosecution Updated Witness List, 20 February 2006 (included 95 "core" witnesses and a "back-up" witness list); and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-581, Prosecution Corrected Updated Witness List, 15 June 2006 (included 88 "core" witnesses).

[95] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision Regarding the Prosecution's Further Renewed Witness List, 5 April 2005.

[96] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order to Prosecution to Produce Witness List and Witness Summaries, 7 July 2004, pp. 3-4.

[97] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order to the Prosecution to Provide Order of Witnesses, 15 September 2004.

found that the Prosecution had established good cause in accordance with Rule 66(A)(ii) to add the witnesses, while noting the nature of their evidence, the reasons for the previous non-inclusion and the absence of prejudice to the Defence. In addition, the Chamber ordered the disclosure of the witness statements that had not already been made and required the Prosecution to delay the calling of the additional witnesses until later in their case.[98]

2.2.1.2. Witness Protective Measures

51. At the commencement of trial, the Trial Chamber issued a decision modifying the previous protective measures in order to allow for additional measures of protection during testimony. All protected witnesses of fact that were identified on the Prosecution's witness lists were permitted, *inter alia*, to testify behind a screening device to hide them from view of the public. Particular categories of witnesses were afforded additional protection in view of their particular circumstances. Victims of sexual offences and insider witnesses were permitted to testify with voice distortion while child witnesses were permitted to testify via closed-circuit television.[99] These protective measures were extended by the Chamber to additional witnesses who were added with leave to the Prosecution's witness list.[100]

52. Throughout the trial proceedings, the Prosecution and the Defence brought oral applications to allow some of the Prosecution witnesses to testify in closed session. The Chamber granted these applications in accordance with Rules 75 and Rule 79 of the Rules by

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[98] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Leave to Call Additional Witnesses, 29 July 2004 (Witnesses TF1-359, TF1-360, TF1-361, TF1-363, TF1-314, and TF1-362); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements, 11 February 2005 (TF1-366, TF1-367, and TF1-368); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision Regarding the Prosecution's Further Renewed Witness List, 5 April 2005, para 21 (TF1-210); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Leave to Call an Additional Witness and Notice to Admit Witness' Solemn Declaration Pursuant to Rules 73*bis*(E) and 92*bis*, 5 April 2006 (Alfred Sesay); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and Request for Protective Measures, 6 April 2006; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and Request for Protective Measures, 15 June 2006.

[99] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004.

[100] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order on Protective Measures for Additional Witnesses, 24 November 2004, p. 5; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, *Confidential* Order on Prosecution Motion to Request Protective Measures for Witnesses TF1-041 and TF1-369, 28 February 2006, pp. 5-6; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and for Order for Protective Measures, 6 April 2006; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for the Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and for Order for Protective Measures, 15 June 2006.

allowing the witnesses to testify either partially or entirely in closed session when it found that allowing the closed session testimony was necessary in order to protect the identity of the protected witness. In doing so, the Chamber was cognisant of the right of the Accused to a public trial, but also the need to ensure the protection and security of protected witnesses before the Court.[101] In some instances, the Chamber ordered that the Court would later make public those portions of the witness's testimony which did not disclose the identity of the witness or of other members of the witness's family.[102]

53. Upon the request of international and national trial monitoring organisations, the Chamber issued a series of orders allowing international and national monitors to continue to monitor trial proceedings during closed session under the condition, *inter alia*, that the monitors respect the Chamber's protective orders and report only on the practice and procedure of the Chamber during closed sessions.[103] The Chamber also permitted investigators

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[101] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order to Hear the Evidence of Witness TF1-235 in Closed Session, 8 November 2004; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order to Hear the Evidence of Witness TF1-071 in Closed Session, 19 January 2005; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T and *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Decision on the Urgent and Confidential Prosecution Application to Vary Protective Measures regarding Witnesses TF1-104 and TF1-081, 11 May 2005; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Prosecution's Application for Portions of the Testimony of Witness TF1-060 to be Heard in Closed Session, 11 May 2005; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Prosecution's Application for the Entire Testimony of Witness TF1-362 to be Heard in Closed Session, 11 May 2005; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Prosecution's Application for the Entire Testimony of Witness TF1-129 to be Heard in Closed Session, 11 May 2005; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the First Accused's Application for Portions of the Testimony of Witness TF1-125 to be Heard in Closed Session, 16 May 2005; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion to Amend Protective Measures for Witnesses TF1-168 and TF1-041, 9 May 2006, pp. 3-4; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion for the Testimony of Witnesses TF1-367, TF-369 and TF1-371 to be Held in Closed Session and for Other Relief for Witness TF1-369, 14 June 2006. *See also* oral rulings given throughout trial proceedings.

[102] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Prosecution's Application for the Entire Testimony of Witness TF1-129 to be Heard in Closed Session, 11 May 2005, paras 2-4; Transcript of 18 November 2005 (CS), pp. 45-46 (TF1-045); Transcript of 14 March 2006 (CS), p. 18 (TF1-330); Transcript of 10 July 2006, p. 10 (TF1-334); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T , Decision on Prosecution Motion for the Testimony of Witnesses TF1-367, TF1-369 and TF1-371 to be held in Closed Session and for Other Relief for TF1-369, 14 June 2006.

[103] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order on Trial Monitoring During Closed Session, 27 October 2004; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order on Trial Monitoring During Closed Session, 5 November 2004; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order on Trial Monitoring During Closed Session, 9 November 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Further Order on Trial Monitoring During Closed Session, 7 February 2006; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order for Access by Authorised Court Monitors to Trial Transcripts Including Closed Session, 1 February 2008.

assigned to both the Prosecution and Defence teams to attend closed session proceedings under certain conditions.[104]

54. Where protective measures were ordered by Trial Chamber II with regard to witnesses testifying in the AFRC trial who were common to the RUF trial, these measures continued to apply in the RUF trial proceedings in accordance with Rule 75(F) of the Rules.

55. Some of the Prosecution witnesses who had been granted protective measures by the Chamber indicated at the time of testimony that they wished to testify publicly. These requests were granted orally after an enquiry by the Chamber.[105]

56. On 29 March 2006, the Trial Chamber ordered the Prosecution to review its witness list to determine whether it was necessary to continue applying protective measures for its witnesses, particularly those residing outside the jurisdiction of the Special Court.[106] Subsequently, the Chamber granted a Prosecution application to lift the protective measures for two of its protected witnesses.[107]

2.2.1.3. Expert Witnesses

57. While the Prosecution had first identified eight expert witnesses,[108] this number was reduced as the trial proceeded. The Chamber ordered the Prosecution to file the *curriculum vitaes* and the reports of the proposed expert witnesses in accordance with Rule 94*bis* of the Rules.[109]

58. The Trial Chamber granted a Prosecution request to add TF1-369 to its witness list as an expert on the issue of forced marriage, ordering the Prosecution to disclose to the Defence

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[104] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order to Permit Investigators to Attend Closed Session Proceedings, 31 March 2006.
[105] Witnesses John Tarnue (former TF1-139), George Johnson (former TF1-167), Hassan Bility (former TF1-355), Denis Koker (former TF1-114), Edwin Kasoma (formerly TF1-288) and Leonard Ngondi (formerly TF1-165).
[106] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order to Review Current Protective Measures, 29 March 2006, p. 4.
[107] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion to Vary Protective Measures for Group I Witnesses TF1-042 and TF1-044, 23 May 2006, p. 4. These witnesses were respectively Ganase Jaganathan and Joseph Mendy.
[108] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-193, Materials Filed Pursuant to "Order to Prosecution to Produce Witness List and Witness Summaries", 12 July 2004. See also other witness lists, cited *supra*.

her expert report[110] and recognised that her expertise had been established in a *prima facie* basis.[111]

59. The Trial Chamber accepted Prosecution witness TF1-296 as an expert on children within the fighting forces and on the age determination process used during the disarmament of child combatants.[112]

2.2.1.4. False Testimony

60. The Sesay Defence filed a motion asserting that Witness TF1-366 knowingly and wilfully gave false evidence contrary to Rule 91.[113] The Trial Chamber found that the inconsistencies in the witness' testimony did not rise to the level of false testimony, and consequently denied the motion.[114]

2.2.2. Disclosure

2.2.2.1. General

61. The Chamber dismissed a motion by the Sesay Defence requesting material from the Prosecution under Rules 66 and 68 of the Rules on the basis that the Defence had failed to specifically identify material evidence that had been withheld by the Prosecution pursuant to Rule 66 or that Rule 68 had been violated.[115] At the same time, a confidential motion filed by

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[109] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order for Compliance of Prosecution with Rule 94*bis*, 9 March 2005; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order on Urgent Prosecution Application for Extension of Time, 2 May 2005.

[110] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, *Confidential* Decision on Prosecution Request for Leave to Call an Additional Expert Witness, 10 June 2005, pp. 6-7. *See also: Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, *Confidential* Order on Prosecution Motion to Request Protective Measures TF1-041 and TF1-369, 28 February 2008.

[111] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, *Confidential* Decision, 23 May 2006.

[112] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript of 11 July 2006, pp. 69-70. *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Written Reasoned Ruling on the Preliminary Characterization of Expert Witness TF1-296, 14 July 2006, paras 15-17.

[113] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366, 12 January 2006.

[114] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366, 25 July 2006, paras 42, 44, 48-49.

[115] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Sesay - Decision on Defence Motion for Disclosure Pursuant to Rule 66 and Rule 68, 9 July 2004, paras 45-48.

the Sesay Defence relating to pre-trial disclosure was denied for failing to seek a ruling or relief.[116]

62. A confidential motion seeking disclosure of information concerning witness TF1-046 that was filed by the Kallon Defence was dismissed by the Chamber on the grounds that it failed to seek any particular ruling or relief under Rule 73(A).[117]

63. The Sesay Defence filed a motion alleging that the testimony of Prosecution Witness General Tarnue revealed a relationship between the Prosecution and the government of the United States and that additional information regarding this relationship should be disclosed as exculpatory evidence under Rule 68.[118] The Trial Chamber found that there were no legal or factual grounds upon which to grant the motion.[119] An application for leave to appeal this decision was denied.[120]

2.2.2.2. General challenges regarding Prosecution practices and disclosure

64. The Sesay and Gbao Defence sought the exclusion of the testimony of Witness TF1-141 on the basis that the Prosecution had destroyed the original handwritten notes taken during interviews with the witness.[121] The Chamber denied the motion, finding that the Defence had failed to establish that the handwritten notes contained any disclosable evidence which had not been subsequently disclosed in another form and that there was no evidence of abuse of

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[116] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Sesay - Decision on Defence Motion, 16 July 2004.

[117] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Kallon - Decision on Confidential Motion of Morris Kallon, 12 October 2004.

[118] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Motion Seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor, 1 November 2004.

[119] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay - Motion Seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor, 2 May 2005, para 67. *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Partially Dissenting Opinion of Justice Pierre Boutet on the Decision on Sesay - Motion Seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor, 2 May 2005: Hon. Justice Boutet would have granted the motion in part by requiring the Prosecution to disclose evidence relating to assistance provided by the Prosecution in connection with the witness's relocation and the extent of any benefits associated with that relocation.

[120] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Application for Leave to Appeal - Ruling (2nd May 2005) on Motion Seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor, 15 June 2005, paras 21-22.

[121] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Gbao and Sesay Joint Defence Application for the Exclusion of the Testimony of Witness TF1-141, 17 May 2005.

process.[122] The Chamber observed, however, that the original handwritten notes of the Prosecution should be redacted and disclosed.[123]

65. The Chamber dismissed a Sesay Defence motion which sought an order or a practice direction obliging the Prosecution to ensure that witnesses sign their statements after each interview. The Chamber held that this would not be in the interests of justice and that each statement and situation must be evaluated on based on the circumstances.[124]

66. The Chamber dismissed a motion by the Sesay Defence which alleged that the Prosecution was "moulding" its evidence by re-interviewing witnesses to uncover additional factual allegations when previous allegations were successfully challenged by the Defence. The Chamber held that the Defence had failed to demonstrate a *prima facie* showing of foul play which was required in order to have the Chamber embark upon an inquiry into the Prosecution's practices.[125] An application for leave to appeal this decision was denied.[126]

2.2.2.3. Disclosure of supplemental statements

67. Throughout the presentation of the Prosecution case, the Defence filed a number of applications seeking the exclusion of evidence contained in supplemental statements that were disclosed shortly before the witnesses were called to testify on the basis that this was new evidence. In each case, the Trial Chamber reviewed the supplemental and original statements of the witnesses in question, the allegations in the Indictment, the Prosecution's Pre-Trial Brief[127] and Supplemental Pre-Trial Brief[128] and the Prosecution's Compliance Report of 11

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[122] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao and Sesay Joint Defence Application for the Exclusion of the Testimony of Witness TF1-141, 26 October 2005, paras 39, 43.
[123] *Ibid.*, paras 45-46.
[124] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Joint Defence Motion Requesting Conformity of Procedural Practice for Taking Witness Statements, 26 October 2005.
[125] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Motion to Request the Trial Chamber to Rule that the Prosecution's Moulding of the Evidence is Impermissible and a Breach of Article 17 of the Statute of the Special Court, 1 August 2006, paras 17-18.
[126] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Application for Leave to Appeal the Decision on Defence Motion for a Ruling that the Prosecution Moulding of Evidence is Impermissible, 5 February 2007.
[127] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73*bis*) of 13 February 2004, 1 March 2004.
[128] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Prosecution Supplemental Pre-Trial Brief Pursuant to Order to OTP to File a Supplemental Pre-Trial Brief of 30th March as Amended by Order of 2 April 2004, 21 April 2004.

May 2004[129] in order to assess if the evidence in question was "new" and if the Defence had established a *prima facie* showing that the Prosecution had breached its disclosure obligations under Rule 66 of the Rules.

68. On 23 July 2004, the Chamber dismissed an oral application by the Sesay Defence to exclude part of the evidence of TF1-060 on the basis that Defence had failed to make a *prima facie* showing that the Prosecution had breached its Rule 66 disclosure obligations.[130] The Chamber later granted an application for the postponement of the testimony of Witness TF1-060 until the next trial session on the basis that the statement directly implicated the Accused and that the Defence investigators were unable to conduct an investigation at that time.[131]

69. On 3 February 2005, the Trial Chamber denied an oral application by the Sesay and Gbao Defence Teams for the exclusion of evidence contained in supplemental statements of Witness TF1-141, ruling that the statements in question did not constitute new statements and that the Prosecution was consequently not in breach of Rule 66.[132] The Chamber held that the Prosecution had the continuing obligation to disclose supplemental evidence obtained through proofing sessions.[133] Leave to appeal this decision was not granted.[134]

70. The Trial Chamber dismissed an application by the Sesay Defence seeking the exclusion of evidence of Witnesses TF1-361 and TF1-122, finding that the allegations contained in the witnesses' statements did not materially alter the incriminating quality of the evidence against the Accused of which the Defence already had notice and that the Defence had failed to establish *prima facie* proof that the Prosecution had breached its disclosure allegations.[135]

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[129] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Updated Compliance Report Filed Pursuant to Undertaking by the Prosecution in Pretrial Conference Held 29 April 2004 (RUF), 11 May 2004.

[130] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Ruling on Oral Application for the Exclusion of "Additional" Statement for Witness TF1-060, 23 July 2004, paras 16-17.

[131] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Oral Application for the Postponement of Testimony of Witness TF1-060, 27 July 2004.

[132] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Ruling on Oral Application for the Exclusion of Statements of Witness TF1-141 dated respectively 9 October 2004, 19 and 20 October 2004, and 10 January, 2005, 3 February 2005, paras 22, 25-26.

[133] *Ibid.*, paras 19 and 34.

[134] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Applications for Leave to Appeal Ruling of the 3rd of February, 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005, para 30.

[135] *See Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on Application for the Exclusion of Certain Supplemental Statements of Witness TF1-361 and TF1-122, 1 June 2005, paras 29-32.

71. On 27 February 2006, an application filed by the Sesay Defence requesting the exclusion from evidence of portions of Witness TF1-117's supplemental statements was dismissed by the Chamber after it found that the allegations in question were not new and that the Defence had sufficient notice of the events referred to in the statements and thus that the Prosecution had not breached its disclosure obligations.[136] A similar motion filed by the Sesay Defence requesting the exclusion of evidence contained in the supplemental statements of TF1-113, TF1-108, TF1-330, TF1-041, and TF1-288 was dismissed by the Trial Chamber on the same grounds.[137]

72. The Chamber dismissed a motion by the Sesay Defence which sought the exclusion of evidence contained in supplemental statements of Witnesses TF1-168, TF1-165 and TF1-041 on the basis that these statements contained new evidence elicited by the Prosecution prior to testimony in an attempt to "mould" their evidence.[138] The Trial Chamber held that, contrary to the Defence assertions, the evidence could not be considered to be new.[139]

73. The Chamber dismissed a motion by the Kallon Defence seeking the earlier disclosure of supplemental statements and held that the Defence had failed to make a *prima facie* showing that the Prosecution was in breach of its Rule 66 obligation to disclose arising from its proofing of witnesses prior to testimony.[140]

2.2.2.4. New evidence elicited during testimony

74. On several occasions, the Trial Chamber was faced with objections by the Defence regarding evidence, not previously disclosed, that was introduced for the first time during oral testimony at trial. The Trial Chamber upheld its previous jurisprudence regarding the principle

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[136] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Defence Motion for the Exclusion of Certain Portions of Supplemental Statements of Witness TF1-117, 27 February 2006, paras 13-15.
[137] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Defence Motion Requesting the Exclusion of Evidence (as Indicated in Annex A) Arising from the Additional Information Provided by Witness TF1-359, TF1-360, TF1-361, TF1-363, TF1-314, and TF1-362, 27 February 2006, paras 13-14.
[138] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Defence Motion Requesting the Exclusion of Evidence (as Indicated in Annex A) Arising from the Additional Information Provided by Witness TF1-168 (14, 21 January and 4 February 2006), TF1-165 (6-7 February 2006) and TF1-041 (9-10, 13 February 2006), 23 February 2006.
[139] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Defence Motion Requesting the Exclusion of Evidence Arising from the Supplemental Statements of Witnesses TF1-168, TF1-165 and TF1-041, 20 March 2006, paras 13-14.
[140] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Motion for an Order Directing the Prosecution to Effect Reasonably Consistent Disclosure, 18 May 2006.

of orality and the acceptance that witnesses may provide new details not previously addressed in their witness statements.[141]

75. On 28 January 2005, the Defence objected to the admission of a portion of the testimony of Witness TF1-015 which appeared to have been known to the Prosecution and yet not disclosed to the Defence.[142] The Trial Chamber found that the Prosecution was in breach of its disclosure obligations under Rule 66 of the Rules and ordered it to disclose to the Defence any related information by the end of that day.[143]

76. On 1 February 2005, the Defence sought the exclusion of evidence of Witness TF1-195 relating to two incidents that had not previously been disclosed.[144] The Prosecution admitted having been in possession of this information for two days without disclosing it to the Defence. The Trial Chamber held that the Prosecution had violated its Rule 66 obligations and ordered the exclusion of testimony relating to these two episodes.[145]

77. The Chamber overruled an objection by the Sesay and Kallon Defence to the admission of a portion of the testimony of Witness TF1-108 on the grounds that the evidence had not been previously disclosed. The Chamber held that the Defence had failed to make a *prima facie* showing that the Prosecution had breached its disclosure obligations.[146]

78. The Chamber, in a majority decision, granted the objection of the Gbao Defence to a portion of the testimony of Witness TF1-371 on the basis that alternative remedies, such as granting an adjournment to the Defence to permit further investigation, would constitute an undue delay.[147] The Prosecution's application for leave to appeal this decision was granted.[148]

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[141] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Disclosure of Witness Statements and Cross-Examination, 16 July 2004, para 25.
[142] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript of 28 January 2005, pp. 21 *et seq.*
[143] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on Disclosure Regarding Witness TF1-015, 28 January 2005, paras 2-3.
[144] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript of 1 February 2005, p. 33 *et seq.*
[145] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on Disclosure Regarding Witness TF1-195, 4 February 2005, paras 6-8.
[146] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Ruling on Defence Evidentiary Objections Concerning Witness TF1-108, 15 June 2006, paras 14-16.
[147] *Prosecutor v. Sesay, Kallon and Gbao,*, SCSL-04-15-T, Written Reasons on Majority Decision on Oral Objection Taken by Counsel for the Third Accused, Augustine Gbao, to the Admissibility of Portions of the Evidence of Witness TF1-371, 2 August 2006, para 31.

The Appeals Chamber overturned the Majority Decision, holding that the Trial Chamber's previous decisions regarding the "new evidence" test should have been applied and would have resulted in a finding that the Defence had ample notice of this allegation prior to the testimony of TF1-371. The Appeals Chamber held that the evidence should be admitted at trial.[149]

2.2.3. Evidentiary Issues

2.2.3.1. Admission of Evidence

2.2.3.1.1. Pursuant to Rule 92*bis*

79. During the presentation of the Prosecution case, the Prosecution notified the Chamber of its intention to seek the admission of a variety of written evidence in lieu of oral witness testimony pursuant to Rule 92*bis* of the Rules.

80. On the 9 November 2005, the Chamber granted the Prosecution application to file the transcripts of the testimony of Witnesses TF1-023, TF1-104, and TF1-169 from the AFRC trial under Rule 92*bis*. The Chamber determined that the evidence for all three witnesses was sufficiently relevant and reliable so as to be admitted and was not unfairly prejudicial to the Defence. The Defence were provided with the opportunity to cross-examine these witnesses before Trial Chamber I.[150]

81. Similar applications were granted for the admission of transcripts of testimony and exhibits admitted during the testimony in the AFRC trial for Witnesses TF1-081,[151] TF1-156

[148] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution's Application for Leave to Appeal Majority Decision Regarding the Objection to the Admissibility of Portions of the Evidence of Witness TF1-371, 15 October 2007.

[149] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion Regarding the Objection to the Admissibility of Portions of Evidence of Witness TF1-371, 13 December 2007. While the Appeals Chamber ordered that the Gbao Defence could re-examine the Witness on this point, Counsel later elected not to do so. *See: Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Issue of Recalling Witness TF1-371 as Directed by the Appeals Chamber, 25 January 2008.

[150] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Confidential Prosecution Notice Under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-023, TF1-104, and TF1-169, 9 November 2005.

[151] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Confidential Prosecution Notice Under Rule 92*bis* to Admit the Transcript of Testimony of TF1-081, 21 February 2006 (with the exception of the words "coming from Bo" which were excluded).

and TF1-179,[152] TF1-256[153] and TF1-334.[154] The evidence of Witness TF1-334 was distinguished from the others in that, while most of the evidence was relevant as background evidence of matters alleged in the Indictment, a portion of his evidence directly related to the acts and conduct of the Accused. Despite this, the Chamber found that its admission would not unfairly prejudice the Defence given that they would be afforded the right to cross-examine the witness extensively.[155] In all of these cases the Defence were provided with the opportunity to cross-examine the witnesses.

82. The evidence of expert witness TF1-369 was admitted pursuant to Rule 92*bis* and the Defence were given the opportunity to cross-examine the expert.[156]

83. The Chamber granted an application to add Prosecution investigator Alfred Sesay to its witness list under Rule 73*bis*(E) and to admit his solemn declaration and related exhibits into evidence pursuant to Rule 92*bis*. Mr. Sesay was subjected to cross-examination and re-examination.[157]

84. The Prosecution also sought to admit the statement of Witness TF1-150, a UN human rights monitor, into evidence without cross-examination since the witness was not available.[158] The Chamber held that the proposed evidence may be seen as going to a critical element of the Prosecution's case and was proximate enough to the Accused so as to require cross-examination and thus denied the application.[159]

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[152] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Notice Under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-156 and TF1-179, 3 April 2006.
[153] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-256, 23 May 2006 (one part of the evidence went to the acts and conduct of others who committed the crimes for which the Accused is alleged to be responsible).
[154] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Notice Under Rule 92*bis* to Admit the Transcript of Testimony of TF1-334, 23 May 2006.
[155] *Ibid.*, p. 5.
[156] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, *Confidential* Decision, 23 May 2006.
[157] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request to Call Additional Witness And Notice to Admit Witness's Solemn Declaration Pursuant to Rules 73*bis*(E) and 92*bis*, 5 April 2006, p. 5.
[158] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Notice under Rule 92*bis* and 89 to Admit the Statement of TF1-150, 5 June 2006.
[159] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Notice under Rule 92*bis* and 89 to Admit the Statement of TF1-150, 20 July 2006, para 30.

85. The Prosecution filed an application seeking to admit various documents into evidence pursuant to Rule 92*bis*.[160] In its decision of 2 August 2006, the Trial Chamber found that some of the documents met the required threshold for admission under Rule 92*bis* in that they were relevant, had reliability that was susceptible of confirmation, and that their admission would not unfairly prejudice the Defence. The Chamber partially granted the motion and admitted portions of some of the documents, including various UN reports, NGO reports, Sierra Leone government documents and transcripts of radio documents.[161]

2.2.3.1.2. Pursuant to Rule 89(C)

86. During the testimony of Witness TF1-071, the Prosecution sought to admit as an exhibit a chart allegedly prepared with the assistance of Witness TF1-071 detailing the command structure of the RUF.[162] The Trial Chamber denied the application on the basis that its introduction into evidence would be tantamount to allowing the Prosecution to ask the witness leading questions.[163] During the cross-examination of Witness TF1-071, the Chamber granted the Defence application to admit the chart for the limited purpose of attacking the credibility of the witness through a prior inconsistent statement.[164]

87. The Trial Chamber dismissed an oral application made by the Gbao Defence[165] to exclude a portion of the testimony of Witness Dennis Koker that related to Gbao's alleged taking of medicine from the witness on the basis that the testimony in question was relevant and that its probative value was not outweighed by its prejudicial effect.[166]

88. The Trial Chamber overruled a Defence objection to the identification of the signatures of Sam Bockarie and the Accused Sesay on documents called Salute Reports that the Prosecution had submitted into evidence as Exhibits 35 and 36 by non-expert Witness TF1-

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[160] *Prosecutor v. Sesay, Kallon and Gbao.*, SCSL-04-15-T, Prosecution Notice Pursuant to Rule 92*bis* to Admit Information into Evidence, 30 May 2006.
[161] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Notice Pursuant to Rule 92*bis* to Admit Information into Evidence, 2 August 2006, p. 6. See Exhibits 147 to 184.
[162] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript of 19 January 2005, p. 57 *ff*.
[163] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Admission of Command Structure Chart as an Exhibit, paras 18, 22.
[164] Transcript of 25 January 2005, pp. 45-46.
[165] Transcript of 28 April 2005, pp. 69-71.

360.[167] In its written decision, the Chamber held that the evidence was relevant and admissible under Rule 89(C) and that its reliability and probative value would be determined later in light of all of the evidence introduced at trial.[168]

89. The Trial Chamber overruled an objection by the Sesay and Kallon Defence that information relating to SBUs beating civilians in Kailahun District was irrelevant, as there were no allegations concerning physical violence in Kailahun District in the Indictment.[169] In its written ruling, the Chamber found that the evidence relating to Kailahun District could be relevant to the various counts of the Indictment.[170]

90. On 11 July 2006, the Prosecution filed a motion to admit the Report of UNAMSIL Headquarters Board of Inquiry No. 00/19 into evidence, on the basis that the Defence had asked a witness questions about the report during cross-examination.[171] The Chamber found that the report was relevant to understanding the context of the Defence cross-examination, and ordered the exhibit admitted into evidence for that sole purpose.[172]

2.2.3.2. Judicial Notice

91. The Chamber denied the application of the Prosecution to take judicial notice of significant days of the Islamic calendar on the basis that while the dates of the Islamic calendar were relevant and could be subjected to judicial notice, the tentative dates provided by the Prosecution did not provide the degree of certainty necessary for judicial notice.[173]

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[166] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker, 23 May 2005, para 12.
[167] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript of 21 July 2005, p. 84.
[168] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Identification of Signatures by Witness TF1-360, 14 October 2005, paras 8-9.
[169] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Ruling on Defence Evidentiary Objections Concerning Witness TF1-108, 15 June 2006, paras 2-3.
[170] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Ruling on Defence Evidentiary Objections Concerning Witness TF1-108, 15 June 2006, paras 14-16.
[171] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination, 11 July 2006.
[172] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination, 2 August 2006.
[173] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Notice for Judicial Notice, 29 July 2006.

2.2.4. Motions for Judgement of Acquittal Pursuant to Rule 98

92. At the conclusion of the Prosecution case, each Defence team notified the Trial Chamber of their intention to move for a Judgement of Acquittal under Rule 98.[174] The Parties filed written Skeletal Arguments and the Court heard oral arguments on the motions on 16 October 2006.

93. In its Oral Ruling delivered on 25 October 2006, the Chamber held that the applicable standard was "one that limits and restricts a tribunal only to a determination as to whether the evidence adduced by the Prosecution at the close of its case, is such as is legally capable of supporting a conviction on one or more of the counts in the indictment."[175] This required the Chamber to evaluate the evidence to determine "whether there is patently no evidence in respect of any [counts of the Indictment] upon which a reasonable tribunal of fact would convict the Accused."[176]

94. The Trial Chamber considered the sufficiency of the evidence in relation to each count of the Indictment and ultimately dismissed all three Defence motions, except with respect to the following locations:

(i) In regard to Counts 3, 4, and 5 of the Indictment, concerning extermination, murder, and violence to life, in particular murder, the Chamber found that no evidence had been adduced with respect to the following locations: Bo District: Telu and Mamboma; Kono District: Willifeh and Biaya; and Koinadugu District: Heremakono, Kumalu, Katombo, Kamadugu, Kurubonla, and Kabala.[177]

(ii) In regard to Counts 6 through 9 of the Indictment, concerning rape, sexual slavery, other inhumane acts, and outrages upon

[174] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Notice by the Defence of Morris Kallon of Intention to Apply for an Oral Motion of Acquittal of Morris Kallon in all of the Counts of the Consolidated Amended Indictment (as amended and refiled on 2 August 2006) Pursuant to Rule 89 (as amended 14 May 2006) and Scheduling Order Dated 2 August 2006, 4 August 2006 and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Defence Joint Notice of Intention to Make Rule 98 Submission, 4 August 2006.
[175] Transcript of 25 October 2006, Oral Rule 98 Decision, p. 6.
[176] *Ibid.*, p. 7, quoting *Prosecutor v. Norman, Fofana and Kondewa*, Decision on Motions for Judgement of Acquittal Pursuant to Rule 98, 21 October 2005, para 50 [CDF Rule 98 Decision].
[177] *Ibid.*, pp. 18 and 41-42.

personal dignity, the Chamber found that no evidence had been adduced relating to the following locations: Kono District: Fokoiya, Tomendeh, and Superman Camp; Koinadugu District: Haramakono, Fadugu, and Kabala.[178]

(iii) In regard to Counts 10 and 11 of the Indictment, concerning violence to life, in particular mutilations, and other inhumane acts, the Chamber found that no evidence had been adduced relating to the following locations: Koinadugu District: Konkoba; Bombali District: Lohondi, Malama, and Mamaka.[179]

(iv) In regard to Count 12 of the Indictment, concerning child soldiers, the Chamber found that there was no evidence adduced in respect to Bonthe, Moyamba, Pujehun, Bo, and Tonkolili Districts, nor evidence for such crimes throughout the Republic of Sierra Leone.[180]

(v) In regard to Count 13 of the Indictment, concerning enslavement, the Trial Chamber found that no evidence had been adduced for the following locations: Koinadugu District: Heremakono, Kumala, and Kamadugu; Freetown and Western Area: Peacock Farm; Port Loko District: Masiaka.[181]

(vi) In regard to Count 14, concerning the crime of pillage, the Trial Chamber found that no evidence had been adduced for the following locations: Bo District: Telu and Mamboma; Koinadugu District: Heremakono and Kamadugu; Kono District: Foindu, Yardu Sando.[182]

(vii) In regard to Counts 15-18 of the Indictment, concerning crimes against UN personnel, the Trial Chamber found that no evidence had been adduced relating to attacks against humanitarian

[178] *Ibid.*, pp. 23-24 and 42-43.
[179] *Ibid.*, pp. 27 and 43.
[180] *Ibid.*, pp. 29-30 and 43.
[181] *Ibid.*, pp. 31 and 44.
[182] *Ibid.*, pp. 34 and 44.

> assistance workers.[183] The Chamber also found that no evidence had been adduced relating to any locations other than Bombali, Kailahun, Port Loko, Kono, and Tonkolili Districts. Additionally, no evidence was adduced for Kailahun District in regard to Counts 15-17, or for Kono District in regard to Counts 15 and 16.[184]

95. On the 7 November 2006, the Sesay Defence filed a motion for clarification of several aspects of the Chamber's Oral Rule 98 Decision.[185] The Chamber dismissed this application on the basis that it did not have jurisdiction to issue a clarification of its own decision, other than for clerical errors.[186] The Defence application for leave to appeal this ruling was dismissed.[187]

2.3. Defence Case

2.3.1. Filings and Pre-Trial Conference

96. In a Scheduling Order, the Chamber ordered each Defence team to file materials in preparation for the commencement of the Defence case. These materials were to include a "core" and "back-up" witness list (detailing identifying data for witnesses, a detailed summary of the witness' testimony, point in the Indictment to which the witness would testify, the estimated time and the language in which the witness was expected to testify, and an indication as to whether or not the witness would testify in person), an indication as to whether the Accused would testify, a list of expert witnesses, a list of common witnesses, a list of exhibits, and a chart outlining the testimonial and documentary evidence upon which the Defence would rely in relation to each count of the Indictment.[188]

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[183] *Ibid.*, pp. 39 and 44.
[184] *Ibid.*, pp. 39 and 44-45.
[185] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Request for Clarification on the Rule 98 Decision, 7 November 2007.
[186] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Request for Clarification on Rule 98 Decision, 2 March 2007.
[187] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Application for leave to appeal 2nd of March Decision, 4 June 2007.
[188] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Scheduling Order Concerning the Preparation and Commencement of the Defence Case, 30 October 2006. The original deadline of 16 February 2007 was extended to 5 March 2007: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision and Order on Defence Applications for an Adjournment of the 16th of February Deadline for Filing of Defence Material, 7 February 2007.

97. The Majority of the Chamber granted the motion of the Gbao Defence to allow Counsel for Gbao to deliver its opening statement at the beginning of its own Defence case, as opposed to at the beginning of the overall Defence case, finding that this was in the interests of justice.[189]

2.3.2. Kallon Alibi

98. At the Pre-Defence Conference of 20 March 2007, the Kallon Defence indicated that it would not rely upon an alibi defence.[190] On 28 March 2007, the Kallon Defence informed the Chamber that it was correcting the statement made at the Pre-Defence Conference and that it would rely upon the defences of alibi and other non-special defences.[191]

99. The Trial Chamber declared that the Kallon Defence had failed to comply with Rule 67(A)(ii) and ordered the Kallon Defence to provide to the Prosecution a notice of alibi indicating the places where Kallon claimed to have been present at the times of the alleged crimes and the identification of the witnesses and any other evidence that were to be called to support the alibi.[192]

2.3.3. Resource Issues

100. The Trial Chamber dismissed an application by the Sesay Defence to review the decision of the Registrar to refuse to provide additional funds to the Sesay Defence team. The Chamber found that the dispute was governed by Article 22 of the Directive on the Assignment of Counsel, which requires disputes between the Defence and the Registrar to be resolved through arbitration, and that the Chamber thus had no jurisdiction to review the Registrar's decision.[193]

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[189] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for the Decision on Request for the Gbao Opening Statement to be Given at the Beginning of the Presentation of Evidence for the Third Accused, 3 July 2007, para 12. *See also: Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Partially Dissenting Opinion of Justice Pierre Boutet on Written Reasons for the Decision on Request for the Gbao Opening Statement to be Given at the Beginning of the Presentation of Evidence for the Third Accused, 3 July 2007.

[190] Transcript of 20 March 2007, p. 84.

[191] Letter to the Honourable Justices of Trial Chamber I from Melron Nicol-Wilson, Co-Counsel and Case Manager, "Correction to Statement made at Pre-Defence Conference on 20 March 2007", 28 March 2007.

[192] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Motion that the Second Accused Comply with Rule 67, 1 May 2007, Orders (a), (b), and (c).

[193] *Ibid.*, paras 12-15.

101. The Sesay Defence filed an application seeking an order from the Trial Chamber to compel the Defence Office and/or Registrar to provide certain additional resources to the Sesay Defence.[194] The Chamber granted the application in part, finding that it possessed inherent jurisdiction to ensure the rights of the Accused under Article 17 of the Statute. The Chamber ordered the Defence Office and the Registrar to provide the Sesay Defence with a second office, a second networked computer, a vehicle for the sole purpose of witness-related trips, and a witness management officer.[195]

102. The Chamber dismissed a further application of the Sesay Defence seeking an order from the Trial Chamber to compel the Defence Office and/or Registrar to provide additional funding to the Sesay Defence for the payment of two expert witnesses.[196] The Chamber held that Article 22 of the Directive on the Assignment of Counsel provided for arbitration of the dispute and that the Chamber could not entertain the application until the arbitration was exhausted.[197]

103. The Sesay Defence later filed an application requesting judicial review of the Registrar's implementation of the Arbitration Decision of 26 April 2007 regarding the Defence's request for additional funds in order to hire an additional counsel. The Trial Chamber found that the Registrar's implementation of the Arbitration Decision of 26 April 2007 was fair and reasonable and dismissed the application for judicial review in its entirety.[198]

2.3.4. Witnesses

2.3.4.1. Witness Lists

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[194] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Application Seeking Adequate Resources Pursuant to Rule 45 and/or Pursuant to the Registrar's Duty to Ensure Equality of Arms (Application I – Logistical Resources), 9 January 2007.

[195] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay Defence Application I – Logistical Resources, 24 January 2007, pp. 4-5.

[196] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Application Seeking Adequate Resources Pursuant to Rule 45 and/or Pursuant to the Registrar's Duty to Ensure Equality of Arms (Application II – Expert Provision), 9 January 2007.

[197] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Application II, 28 February 2007, paras 24-28.

[198] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Sesay Defence Team's Application for Judicial Review of the Registrar's Refusal to Provide Additional Funds for an Additional Counsel as part of the Implementation of the Arbitration Agreement of the 26th of April 2007, 12 February 2008.

104. The Defence teams filed lists of witnesses and exhibits on 5 March 2007. The Sesay Defence identified 175 core witnesses, with the testimony of 50 of them to be admitted under Rule 92*bis*, 146 backup witnesses and 395 exhibits.[199] The Kallon Defence identified 96 core witnesses, 3 of them falling under Rule 92*bis*, 61 backup witnesses and 83 exhibits.[200] The Gbao Defence identified 66 core witnesses and 13 backup witnesses, 1 of which would be admitted under Rule 92*bis*, and 12 exhibits.[201]

105. The Trial Chamber granted the request of the Kallon Defence to add five additional witnesses to its witness list, having found that the witnesses would provide relevant and material testimony and that the Defence had shown good cause.[202] Protective measures were granted for four of the witnesses.[203] The Chamber granted a further Kallon Defence application to add ten new witnesses to its core witness list while removing 17 witnesses. The Chamber refused to grant protective measures for these witnesses without further information as to the country of residence of the proposed witnesses.[204]

106. During the presentation of the Defence cases for Sesay and Kallon, the Gbao Defence filed several applications requesting leave to call additional witnesses. The Chamber granted the Gbao Defence motions, noting that the proposed witnesses would provide relevant and material testimony, which was sufficient to show good cause and to be in the interests of justice, and ordered the protective measures for the additional witnesses.[205]

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[199] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Filing of Documents in Compliance with Scheduling Order Concerning the Preparation and the Commencement of the Defence Case, Dated 30 October 2006, 5 March 2007.

[200] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Kallon Defence Filing in Compliance with Scheduling Order Concerning the Preparation and Commencement of the Defence Case. 5 March 2007.

[201] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Gbao - Filing of Defence Materials, 5 March 2007.

[202] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Request for Leave to Vary Witness List and for Protective Measures, 16 January 2008, para 17.

[203] The fifth witness was an international witness and the Chamber ordered the Kallon Defence to provide evidence relating to that person's country of residence, and, if this was outside West Africa, a *prima facie* showing to substantiate the need for protection: *Ibid.*, para 20.

[204] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Kallon Request for Leave to Vary Witness List and for Respective Protective Measures and Confidential Annex A, 21 April 2008.

[205] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao Request for Leave to Call Additional Witnesses and for Order for Protective Measures, 16 October 2007; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao-Request for Leave to Call Four Additional Witnesses and for Order for Protective Measures, With Annex A, 19 May 2008; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao-Request for Leave to Call Four Additional Witnesses and for Order for Protective Measures, With Annex A, 19 May 2008.

107. The Sesay Defence filed an application for the issuance of a subpoena to the former President of Sierra Leone, Ahmed Tejan Kabbah. The Chamber found that Dr. Kabbah's testimony would provide material assistance to the Sesay Defence case and issued a subpoena.[206] Former President Kabbah testified in the RUF trial on 16 May 2008.

2.3.4.2. Witness Protective Measures

108. The Sesay Defence sought protective measures for its witnesses similar to those granted to the Prosecution witnesses.[207] The Chamber largely granted the measures for witnesses in Sierra Leone and in West Africa and for witnesses outside of West Africa who had indicated a willingness to testify. The Chamber refused to grant protective measures to "potential" witnesses residing outside of West Africa who had not indicated their willingness to testify.[208] An application for leave to appeal the decision of the Chamber was denied.[209] A subsequent Defence request for protective measures for certain witnesses outside of West Africa was granted, with the Chamber noting that these witnesses, who had indicated a willingness to testify, were already covered by the first decision.[210]

109. On 18 January 2007, the Kallon Defence filed a motion for protective measures for its witnesses, seeking the same measures that the Sesay Defence had requested.[211] The Chamber ordered the Defence to submit evidence in support of its request and granted interim protection to the witnesses.[212] After considering the additional Defence submissions filed, the Chamber granted in part the protective measures sought.[213]

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[206] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Decision on Motion for Issuance of a Subpoena to H.E. Dr. Ahmed Tejan Kabbah, Former President of the Republic of Sierra Leone, 30 June 2008, para 23.

[207] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 25 July 2006.

[208] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 30 November 2006.

[209] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay Defence Application for Leave of Appeal Decision on Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 28 February 2007.

[210] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Second Sesay Defence Motion for Immediate Protective Measures for Witnesses, 16 May 2007.

[211] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Public Kallon Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Disclosure, 18 January 2007.

[212] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order for Defence Submissions and Interim Order on Kallon Motion for Immediate Protective Measures, 1 March 2007.

[213] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Kallon Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 19 March 2007.

110. The Gbao Defence filed two motions for protective measures for its witnesses.[214] The Chamber granted the motion in part and ordered protective measures similar to those ordered for the Sesay Defence witnesses.[215]

111. On 4 March 2008, the Chamber issued an oral ruling granting the Prosecution's application[216] to rescind the protective measures initially granted to six international Defence witnesses.[217] The Chamber immediately granted an oral application made by Counsel for Sesay and Kallon to maintain the protective measures with regard to one of the witnesses, DIS-310 (DMK 147), who was also permitted to testify in closed session.[218] Several days later, the Chamber issued a further oral ruling dismissing the application of Sesay Defence for the reinstatement of protective measures for witnesses DIS-314 and DIS-317.[219]

112. The Prosecution filed a similar application with regard to four Kallon Defence witnesses[220] and when the Kallon Defence did not object, the Chamber ordered that the protective measures that had been initially granted for these witnesses be rescinded.[221] As already noted, the Chamber also denied the Kallon Defence request for protective measure for ten additional witnesses on the basis that the Defence had not provided information regarding the country of residence of the proposed witnesses.[222]

113. When the Kallon Defence filed an application seeking the admission of the witness statements for DMK-422 and DMK-400,[223] the Prosecution sought clarification on the status of

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[214] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Public Gbao Motion for Immediate Protective Measures, 26 January 2007; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Confidential Gbao Motion for Delayed Disclosure and Related Measures for Witnesses, 14 February 2007.

[215] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao Defence Motion for Immediate Protective Measures and Confidential Motion for Delayed Disclosure and Related Measures for Witnesses, 1 March 2007.

[216] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Urgent and Confidential Prosecution Motion to Vary Protective Measures for DIS-249, DIS-310, DIS-314, DIS-315, DIS-316, and DIS-317, 27 February 2008.

[217] Transcript of 4 March 2008, p. 67 (C.S.). The affected witnesses included DIS-249, DIS-310, DIS-314, DIS-315, DIS-316, and DIS-317.

[218] Transcript of 4 March 2008, p. 68 (C.S.).

[219] Transcript of 7 March 2008, p. 122.

[220] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Urgent and Confidential Motion to Vary Protective Measures for Witnesses DMK-159, DMK-129, DMK-145, and DMK-146, 15 April 2008.

[221] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision to Vary Protective Measures, 18 April 2008.

[222] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Kallon Request to Vary Witness List and for Respective Protective Measures and Confidential Annex A, 21 April 2008. The witnesses concerned were DMK-400, DMK-422, DMK-444, DMK-488, DMK-550, DMK-600, DMK-700, DMK-770 and DMK-880.

[223] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Urgent Application for the Admission of the Witness Statements of DMK-422 and DMK-400 Under Rule 92*bis* or, in the Alternative, Under Rule 92*ter*, 22 May 2008.

the witnesses.[224] The Chamber observed that it had not granted the protective measures requested for these witnesses and ordered the Kallon Defence to file a public corrigendum referring to witnesses DMK-422 and DMK-400 by their real names.[225] Since the same error had been made with regard to witness DMK-444, the Chamber ordered that the transcripts of trial proceedings should be edited to refer to the witness by his real name.[226] The Chamber dismissed a request for clarification of its decision filed by the Kallon Defence, holding that its previous decision was sufficiently explicit.[227]

114. The Sesay Defence filed a motion seeking the lifting of protective measures with regard to certain Prosecution witnesses in order to allow for full disclosure of unredacted witness statements. The Trial Chamber granted the motion and ordered the Prosecution to disclose unredacted Prosecution witness statements under both Rule 66 and Rule 68.[228] The Prosecution application for leave to appeal this decision was granted.[229] The Appeals Chamber found that the Trial Chamber had not applied the correct test in its evaluation of altering the protective measures. The Appeals Chamber granted the Prosecution's appeal and dismissed the Sesay Defence Motion.[230]

115. The Chamber dismissed an application by the Sesay Defence to initiate contempt proceedings against Prosecution investigators for the Taylor trial for having contacted a Sesay Defence witness in contravention of the Chamber's order granting protective measures to Sesay Defence witnesses. The Trial Chamber held that this breach was unintentional and had

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[224] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Request for Clarification of Status of DMK-400 and DMK-422, 23 May 2008.

[225] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Clarification of Status of DMK-400 and DMK-422, 26 May 2008, p. 3. *See also: Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Public Corrigendum Kallon Defence Application for the Admission of the Witness Statements for Buhari Musa and Amara Esse Under Rule 92*bis* or, in the Alternative, Under Rule 92*ter*, 26 May 2008.

[226] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Clarification of Status of DMK-400 and DMK-422, 26 May 2008, p. 3. Witness DMK-444, whose real name is Maj. Gen. Mohammed Abdulahi Garbah, testified on 19-20 May 2008.

[227] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Kallon Request for Clarification of Status of DMK-444, 27 May 2008.

[228] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses, 9 November 2007.

[229] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses, 25 February 2008.

[230] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Appeal of the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses, 23 May 2008.

occurred due to the fact that the Defence had not adequately disclosed information identifying the witness.[231]

2.3.4.3. Expert Witnesses

116. In compliance with the Chamber's order, the Gbao and Sesay Defence teams filed an expert report for their joint expert witness.[232] The Chamber admitted the report into evidence, but granted the Prosecution's oral application to exclude certain portions of the report on the basis that they offended the "ultimate issue rule".[233]

2.3.5. Disclosure

117. On 30 March 2007, the Sesay Defence filed a motion seeking to inspect witness statements and interview notes of any witnesses it intended to call, in particular witnesses DIS-126 and DIS-258.[234] The Chamber denied the motion, finding that the Prosecution had given the Sesay Defence the opportunity to inspect the statements of the two witnesses and had disclosed the statement of DIS-258 and that, with regard to DIS-126, the Sesay Defence had not made a *prima facie* showing that the statement was exculpatory.[235]

118. The Sesay Defence filed a motion seeking an order forcing the Prosecution to disclose all statements in its possession which were the result of interviews with potential defence witnesses or allow their inspection.[236] The Chamber denied the application for the disclosure of the Prosecution documents on the basis that the Defence failed to show good cause, but ordered that the Defence could inspect the documents.[237]

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[231] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Confidential Decision on Sesay Defence Motion to Initiate Contempt Proceedings, 13 June 2008.
[232] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Gbao and Sesay Defence Filing of Expert Report in Compliance with Trial Chamber's 22nd May 2008 Order, 26 May 2008.
[233] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Admissibility on Certain Parts of Expert Report of Johan Hederstadt, 29 July 2008.
[234] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Defence Motion to Request the Trial Chamber to Permit Inspection of Witness Statements (Rule 66(A)(iii)) and/or Order Disclosure Pursuant to Rule 68, 30 March 2007, para 12.
[235] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Motion for Inspection of Witness Statements (Rule 66(A)(iii)) and/or Order Disclosure Pursuant to Rule 68, 31 May 2007, 24-26.
[236] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Application for Disclosure Pursuant to Rules 89(B) and/or 66(A)(ii), 4 September 2007.
[237] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Application for Disclosure Pursuant to Rules 89(B) and/or 66(A)(ii), 10 January 2008.

119. The Chamber dismissed an application by the Sesay Defence that sought the hearing of evidence concerning the payments to witnesses by the Prosecution's Witness Management Unit on the basis that the Sesay Defence had the opportunity to address this issue during its cross-examination of Prosecution witnesses and that no material prejudice had been caused.[238]

120. On 9 June 2008, the Gbao Defence filed a motion seeking, *inter alia*, the stay of Counts 15-18 of the Indictment relating to the UNAMSIL peacekeepers due to the late disclosure of exculpatory evidence by the Prosecution.[239] The Chamber held that the Prosecution had breached Rule 68 by failing to disclose the witness evidence until after the close of the Prosecution's case. Nevertheless, the Chamber found that the Gbao Defence, which had been in possession of the disclosure for 20 months before filing the application, had not suffered any material prejudice as a result of the delayed disclosure. The Chamber found that there was no abuse of process and denied the application.[240]

2.3.5.1. General Challenges Regarding Prosecution Practice and Disclosure

121. The Sesay Defence filed a motion submitting that the Prosecution engaged in abuse of process by re-investigating its case during the trial for the purpose of moulding the Prosecution case to fit the evidence as the trial unfolded and seeking *inter alia* a stay of the indictment for abuse of process.[241] The Trial Chamber held that the practice of proofing witnesses was legitimate and that the Prosecution had not engaged in moulding the evidence. The Chamber concluded that the Defence had failed to make a *prima facie* showing of foul play on the part of the Prosecution and dismissed the motion.[242]

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[238] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses, 25 June 2008.

[239] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Confidential Urgent Gbao Motion Requesting the Trial Chamber to Stay Trial Proceedings of Counts 15-18 against the Third Accused for Prosecution's Violation of Rule 68 and Abuse of Process, 9 June 2008.

[240] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Decision on Gbao Motion Requesting the Trial Chamber to Stay Trial Proceedings of Counts 15-18 against the Third Accused for Prosecution's Violation of Rule 68 and Abuse of Process, 22 July 2008. This decision was originally filed confidentially, but was subsequently made public by the Chamber: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Consequential Order Regarding Written Reasoned Decision on Gbao Motion Requesting the Trial Chamber to Stay Trial Proceedings of Counts 15-18 against the Third Accused for Prosecution's Violation of Rule 68 and Abuse of Process, 28 July 2008.

[241] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Defence Motion Seeking a Stay of the Indictment and Dismissal of All Supplemental Charges, 24 April 2007.

[242] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Motion Seeking a Stay of the Indictment and Dismissal of All Supplemental Charges (Prosecution's Abuse of Process and/or Failure to

2.3.6. Evidentiary Issues

2.3.6.1. Admission of Statements of Accused Sesay

122. During its cross-examination of the Accused Sesay, the Prosecution sought to introduce into evidence copies of statements that the Accused Sesay had provided after he was arrested by the Special Court in order to impeach his credibility. The Trial Chamber held that it was necessary to hold a *voir dire* in order to assess the voluntariness of the statements made by Sesay to representatives of the Prosecution between 10 March 2003 and 15 April 2003.[243] The *voir dire* was held from 12 to 21 June 2007. Four witnesses, including three Prosecution investigators, were called by the Prosecution, while 3 witnesses were called by the Sesay Defence. In total, 46 exhibits were tendered.

123. On 22 June 2007, following the *voir dire*, the Chamber orally concluded that all statements Sesay made to the Prosecution were to be excluded because they were not obtained voluntarily by the Prosecution.[244] On 30 June 2008, the Chamber released its written reasons for the exclusion of the statements in which it found that the interviews of Sesay were "involuntary having been so obtained out of 'fear of prejudice and the hope of advantage'", especially the hope that Sesay would be a witness and not an accused person before the Special Court.[245]

2.3.6.2. Admission of Evidence Pursuant to Rule 92bis and Rule 92ter

124. The Sesay Defence filed a series of motions seeking the admission of written evidence pursuant to Rule 92*bis* and/or Rule 92*ter*. The Chamber granted the admission of the written statement of DIS-015 pursuant to Rule 92*ter* subject to cross-examination with the consent of the parties.[246] The Chamber ordered the admission of the written statement of DIS-129 pursuant to Rule 92*ter*, with the exception of one portion which went to the acts and conduct

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Investigate Diligently), 6 December 2007. The statement in question had been disclosed by the Prosecution on 20 October 2006, just after the Chamber's Rule 98 Decision, and the motion by the Defence was filed on 9 June 2008.

[243] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on *Voir Dire* – Written Reasons, 2 November 2007.

[244] Transcript of 22 June 2007, pp. 2-3.

[245] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reason – Decision on the Admissibility of Certain Prior Statements of the Accused Given to the Prosecution, 30 June 2008, para 66.

[246] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Motion for Admission of Written Evidence Pursuant to Rule 92*ter*, 15 February 2008.

of the Accused Sesay, on the condition that the witness be made available for cross-examination.[247]

125. The Sesay Defence then filed one motion and three applications seeking the admission of 23 witness statements pursuant to Rule 92*bis* without cross-examination. In a consolidated Decision, the Trial Chamber granted the motions in part and admitted those statements that were neither proximate enough to the Accused so as to require cross-examination nor unduly repetitive, with those portions that went directly to the acts and conduct of the Accused excised.[248]

126. The Chamber dismissed an application filed by the Kallon Defence seeking to admit the witness statements of Buhari Musa and Amara Essy under Rule 92*bis* since it found that the statements lacked any indicia of reliability.[249]

2.3.6.3. Exhibits

127. The Chamber dismissed a motion by the Gbao Defence for leave to add two documents to their exhibit list and to have them admitted into evidence on the grounds that the Gbao Defence failed to show good cause and that it would be contrary to the principles and standards of reasonableness and fairness.[250]

2.3.6.4. Judicial Notice

128. The Sesay Defence filed an application for the Chamber to take judicial notice of 82 proposed adjudicated facts taken from the CDF and AFRC Trial Judgements.[251] The Chamber dismissed the application in its entirety, having found that the proposed facts should not be admitted as they were *inter alia* not relevant, were taken out of context, were misleading or

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[247] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Application for the Admission of the Witness Statement of DIS-129 Under Rule 92*bis* or, in the Alternative, Under Rule 92*ter*, 12 March 2008.
[248] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92*bis*, 15 May 2008. Portions of the statements of DIS-050, DIS-140, DIS-213, DIS-040 and DIS-067 were admitted into evidence.
[249] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Kallon Defence filed an Application for the Admission of Witness Statements of Buhari Musa and Amara Essy Under Rule 92*bis*, 30 May 2008.
[250] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Gbao Defence Counsel filed a Request for Leave to Add Two Documents to its Exhibit List and to Have Them Admitted Into Evidence, 28 May 2008.
[251] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Sesay Defence Application for Notice to be taken of Adjudicated Facts Pursuant to Rule 94(B), 23 May 2008.

contained legal conclusions or because, at this stage in the proceedings, their admission would not be in the interests of justice.[252]

2.3.7. Challenges to the Indictment

129. After the close of the Prosecution case, the Gbao and Kallon Defence both sought to raise defects in the form of the Indictment.[253] The Chamber dismissed these motions, holding that it would be more appropriate to consider challenges to the form of the Indictment at the end of the trial. The Chamber noted that it would take into account the fact that the Defence had attempted to raise objections at an earlier stage when it ultimately considered the issue.[254]

130. During the Prosecution cross-examination of Witness DIS-281, the Sesay Defence, supported by the Kallon and Gbao Defence, applied for an Order from the Court requiring the Prosecution to state the scope of its case regarding the alleged RUF involvement in the Freetown invasion of January 1999.[255] Recognising that the scope of cross-examination was generally a matter of Prosecutorial discretion, and declining once again to consider challenges to the form of the Indictment prior to the close of proceedings, the Chamber dismissed the motion.[256]

131. On 14 March 2008, the Kallon Defence filed a motion seeking to exclude evidence that was allegedly outside the scope of the Indictment.[257] Consistent with previous Decisions, the Chamber declined to consider any arguments which amounted to a challenge to the Indictment and refused to consider excluding evidence on that basis. The Chamber dismissed the motion, holding in respect of all of the impugned evidence that either (a) the evidence was

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[252] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay Defence Application for Notice to be taken of Adjudicated Facts Pursuant to Rule 94(B), 23 June 2008.

[253] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Gbao Request for Leave to Raise Objections to the Form of Indictment, 23 August 2007; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao Request for Leave to Raise Objections to the Form of the Indictment, 17 January 2008.

[254] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao Request for Leave to Raise Objections to the Form of the Indictment, 17 January 2008; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Kallon Motion on Challenges to the Form of the Indictment and for Reconsideration of Order Rejecting Filing and Imposing Sanctions, 6 March 2008, p. 2.

[255] Transcript of 12 November 2007, Wayne Jordash, pp. 119-123; Transcript of 13 November 2007, Kennedy Ogeto, pp. 40-42; Transcript of 13 November 2007, John Cammegh, pp. 43-46.

[256] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Defence Motion for an Order to the Prosecution to Clarify and Specify the Scope of its Case Regarding RUF Involvement in the Freetown Invasion of January 6, 1999, 6 March 2008, paras 17-10.

relevant under Rule 89(C); or (b), the Kallon Defence had not made out a *prima facie* case that the material facts to which it objected had not been disclosed previously in the Indictment, Pre-Trial briefs, Opening Statement or in other disclosure materials or communications.[258]

2.3.8. Motion for Disqualification of Hon. Justice Thompson

132. On 14 November 2007, the Defence teams for Sesay and Gbao filed a joint motion seeking the voluntary withdrawal or the disqualification of Hon. Justice Thompson from the RUF case on the basis that his Separate Concurring and Partially Dissenting Opinion to the CDF Trial Judgement created a reasonable apprehension of bias.[259] When Hon. Justice Thompson indicated that he would not voluntarily withdraw from the case,[260] the remaining Judges, Hon. Justice Itoe and Hon. Justice Boutet, deliberated on the matter. The Chamber found that while "some indicia of an appearance of bias" had been established when one examined the language of Hon. Justice Thompson's Separate Opinion, the Chamber was satisfied that this was insufficient to rebut the high threshold of the presumption of impartiality afforded to judges of international criminal tribunals or to illustrate a reasonable appearance of bias on the part of Hon. Justice Thompson.[261] On a joint application by all parties, the Chamber immediately granted leave to appeal.[262]

133. The Appeal Chamber held that the Trial Chamber had erred by concluding that an indicia of appearance of bias would not necessarily amount to a reasonable appearance of bias that would require the disqualification of the judge. The Appeals Chamber found that there

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[257] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Kallon Motion to Exclude Evidence Outside the Scope of the Indictment with Confidential Annex A, 14 March 2008.

[258] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Kallon Motion to Exclude Evidence Outside the Scope of the Indictment, 26 June 2008.

[259] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case, 14 November 2007. *See also*: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Kallon Statement in Support of the Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case, 20 November 2007.

[260] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Hon. Justice Bankole Thompson's Comments on Sesay, Kallon and Gbao Joint Motion for Voluntary Withdrawal or Disqualification from the RUF Case Filed Pursuant to Rule 15 of the Rules of Procedure and Evidence, 28 November 2007 and its Corrigendum.

[261] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay and Gbao Motion Voluntary Withdrawal or Disqualification of Hon. Justice Bankole Thompson from the RUF Case, 6 December 2007.

[262] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Leave to Appeal Decision on Sesay and Gbao Motion Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case, 6 December 2007.

was no ascertainable bias in the Separate Opinion by Hon. Justice Thompson and accordingly upheld the ruling of the Trial Chamber.[263]

2.4. Miscellaneous

134. The Trial Chamber dismissed an application by the Principal Defender on behalf of all of the Accused in the CDF and RUF trials seeking the judicial review of the decision of the Registrar to install surveillance cameras in the detention facility. The Chamber held that the Principal Defender did not have standing to bring such an application or to represent the Accused after they were represented by assigned Defence counsel.[264]

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[263] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay, Kallon and Gbao Appeal Against Decision on Sesay and Gbao Motion Voluntary Withdrawal or Disqualification of Hon. Justice Bankole Thompson from the RUF Case, 24 January 2008.

[264] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons on Decision on the Principal Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility, 22 June 2006. *See also*: *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Principal Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility, 6 April 2006.

ANNEX C: INDICTMENT

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

CORRECTED AMENDED CONSOLIDATED 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, organised 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 organised 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 organised 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.

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 organised 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 about 29 July 2003. From about May 2000 until about 10

March 2003, 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 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, between 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 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 terrorise 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: TERRORISING 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 the crimes set forth below in paragraphs 45 through 82 and charged in Counts 3 through 14, as part of a campaign to terrorise the civilian population of the Republic of Sierra Leone, and did terrorise 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, Sembehun, 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 (or Bornoya), Karina, Mafabu, Mateboi and Gbendembu (or Gbendubu or Pendembu), 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 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 Manaarma, 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.

COUNTS 6 – 9: SEXUAL VIOLENCE

54. Widespread sexual violence committed against civilian women and girls included brutal rapes, often by multiple rapists, and forced "marriages". 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, Wondedu 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 and/or forced into "marriages". The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";

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/or forced into "marriages" and/or subjected to other forms of sexual violence. The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";

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 (or Rosors or Rossos). In addition, an unknown number of abducted women and girls were used as sex slaves and/or forced into "marriages" and/or subjected to other forms of sexual violence. The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";

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 and/or forced into "marriages". The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";

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/or forced them into "marriages" and/or subjected them to other forms of sexual violence. The

"wives" were forced to perform a number of conjugal duties under coercion by their "husbands";

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, members of the AFRC/RUF raped an unknown number of women and girls in various locations in the District. In addition, an unknown number of women and girls in various locations in the District were used as sex slaves and/or forced into "marriages" and/or subjected to other forms of sexual violence by members of the AFRC/RUF. The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";

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;

And

Count 8: Other inhumane act, a CRIME AGAINST HUMANITY, punishable under Article 2.i. of the Statute;

In addition, or in the alternative:

Count 9: 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 10 - 11: 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 Wondedu. 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 (Rosors or Rossos). 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 10: 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 11: Other inhumane acts, a **CRIME AGAINST HUMANITY,** punishable under Article 2.i. of the Statute.

COUNT 12: 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 8of 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 12: 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 13: 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 to January 2000, 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, Wondedu, 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;

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

COUNT 14: 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 14: 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 15 – 18: 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:

Count 15: 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 16: For the unlawful killings, Murder, a **CRIME AGAINST HUMANITY,** punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

Count 17: 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 18: 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 2nd day of August 2006
Freetown, Sierra Leone

[signed]
Christopher Staker
Acting Prosecutor

ANNEX D: JUDICIALLY NOTICED FACTS

1. During the course of trial, the Trial Chamber took judicial notice of the following facts as to the truth of their contents:[1]

A. The conflict in Sierra Leone occurred from March 1991 until January 2002.

B. The city of Freetown, the Western Area, and the following districts are located in the country of Sierra Leone: Port Loko, Bombali, Koinadugu, Kono, Kailahun, Kenema, Bo.

E. Sierra Leone acceded to the Geneva Conventions of 12 August 1949 and Additional Protocol II to the Geneva Conventions on 21 October 1986.

H Groups commonly referred to as the RUF, AFRC and CDF were involved in armed conflict in Sierra Leone.

J. The RUF, under the leadership of FODAY SAYBANA SANKOH, began organised armed operations in Sierra Leone in March 1991.

K. During the ensuing armed conflict, the RUF forces were also commonly referred to as "RUF", "rebels", and "People's Army" by the population of Sierra Leone.

M. 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.

N. However, the active hostilities thereafter recommenced.

O. 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.

P. On 25 May 1997 JOHHNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC.

Q. The AFRC forces were commonly referred to as "Junta" by the population of Sierra Leone.

R. 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 formed an alliance with the AFRC.

[1] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Consequential Order Regarding Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 24 May 2005, Annex I [Consequential Order on Judicial Notice].

S. The AFRC/RUF Junta forces (Junta) were also commonly referred to as "Junta", "rebels", and "People's Army" by the population of Sierra Leone.

T. After the 25 May 1997 coup d'état, a governing body was created within the Junta that was the sole executive and legislative authority within Sierra Leone during the Junta.

U. The governing body included leaders of both the AFRC and the RUF.

V. 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.

W. After the Junta was removed from power, the AFRC/RUF alliance continued.

X. 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.

2. The Trial Chamber also took judicial notice of the existence and authenticity of the following documents:[2]

UN Security Council Resolutions

Tab 1. Resolution 1132 (8 October 1997).
Tab 2. Resolution 1181 (13 July 1998), para. 1;
Tab 3. Resolution 1220 (12 January 1999);
Tab 4. Resolution 1270 (22 October 1999) para. 6;
Tab 5. Resolution 1289 (7 February 2000) para. 4;
Tab 6. Resolution 1299 (19 May 2000);
Tab 7. Resolution 1306 (5 July 2000);
Tab 8. Resolution 1313 (4 August 2000);
Tab 9. Resolution 1346 (30 March 2001).

Secretary General Reports on the Situation in Freetown

Tab 10: 21 November 1995 (S/1995/975), paragraph 2;
Tab 11: 18 March 1998 (S/1998/249) paragraphs 6, 20;
Tab 12: June 1998 (S/1998/486) paras 26, 27, 35-37.

Reports of the United Nations Observer Mission in Sierra Leone (UNOMSIL)

Tab 13: First Progress Report 12 August 1998 (S/1998/750) paras. 10, 12, 13, 14, 33, 36, 37, 38;
Tab 14: Second Progress Report 16 October 1998 (S/1998/960) para. 21;
Tab 15: Third Progress Report 16 December 1998 (S/1998/1176) para. 18;
Tab 16: Fifth Report 4 March 1999 (S/1999/237) paras 2, 21-27;

[2] Consequential Order on Judicial Notice, Annex II, Part I.

Tab 17: Sixth Report 4 June 1999 (S/1999/645) para. 7, 19, 20, 30, 31, 32.

Reports of the United Nations Mission in Sierra Leone (UNAMSIL):

Tab 67: Thirteenth Report 14 March 2002 (S/2002/267) para. 2;
Tab 68: 6 December 1999 (S/1999/1223) para 3, 4, 7;
Tab 69: 19 May 2000 (S/2000/455).

Official Statements by President of the Security Council

Tab 70: Statement by the President of the Security Council, United Nations Security Council S/PRST/2000/14 (4 May 2000);
Tab 71: Statement by the President of the Security Council, United Nations Security Council S/PRST/2000/24 (17 July 2000).

Humanitarian Situation Reports - UN Office for the Coordination of Humanitarian Affairs:

Tab 18: Sierra Leone Humanitarian Situation Report 5 June 1997, para. 5;
Tab 19: Sierra Leone Humanitarian Situation Report 14 July 1997;
Tab 20: Sierra Leone Humanitarian Situation Report 8 September 1997;
Tab 21: Sierra Leone Humanitarian Situation Report 17 May 1999 Sections 2, 3 ;
Tab 22: Sierra Leone Humanitarian Situation Report 10 August 1999, Section 1, 2, 3, 5;
Tab 23: Sierra Leone Humanitarian Situation Report 9 October 1999, Section 1, 2, 3;
Tab 24: Sierra Leone Humanitarian Situation Report 20 November 1999, Section 2;
Tab 25: Sierra Leone Humanitarian Situation Report 7 August 2000, Section A.

Other Miscellaneous UN Reports

Tab 26: Human Rights Assessment Mission to Freetown 25 January and 1 to 4 February 1999, Findings and Recommendations, pages 3-9;
Tab 27: Report of the Panel of Experts Appointed Pursuant to the United Nations Security Council Resolution 1306 (2000), December 2000, paragraph180;
Tab 28: Report of the Panel of Experts Appointed Pursuant to UN Security Council Resolution 1343 (S/2001/1015), 26 October 2001;
Tab 29: UNHCR Report on Atrocities Committed Against the Sierra Leone Population, UNHCR Conakry Branch Office, 28 January 1999, Victim reports Cases #1-38;
Tab 72: UNCHR Background Paper on Refugees and Asylum Seekers from Sierra Leone, Geneva, November 1998.

Sierra Leone Official Documents

Tab 51 and 65: Government Notices No 215 (P.N. No. 3 of 1997) of 3 September 1997 published in gazettes nos. 52 and 54 of 4 September 1997 & 18 September respectively. Sierra Leone Gazette Nos. 52 and 54;
Tab 62: AFRC Proclamation - PN no.3 of 1997, Supplement to Sierra Leone Gazette Vol. CXXVIII, No. 34, dated 28 May 1997;
Tab 64: Constitution of Sierra Leone 1991 - Sections 55, 156;

Tab 76: Government Notice 272 (P.N. No. 3 of 1997), Sierra Leone (SL) Gazette No.69;
Tab 77: Decrees 1, 4, 5, 6 and 7 of 1997. Dec 1 - SL Gazette No. 41; Dec 5 - SL Gazette No. 49; Dec 6 - SL Gazette No. 63; Dec. 7 - SL Gazette No. 66;

3. The Chamber took judicial notice of the existence, authenticity and contents of the following documents:[3]

Maps, Peace Agreements, Treaties

Tab 55: The Lomé Peace Accord, the Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), 7 July 1999;
Tab 56: The Abidjan Peace Accord, The Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), 30 November 1996;
Tab 57: The Conakry Accord: ECOWAS Six-Month Peace Plan For Sierra Leone 23 October 1997 - 22 April 1998, 23 October 1997;
Tab 58: Ceasefire Agreement Between Government and the Revolutionary United Front, 18 May 1999;
Tab 88: Map of Sierra Leone, Scale 1:350,000, UNAMSIL Geographic Information Service, 6 May 2002;
Tab 89: Article 3(1) of the Convention (IV) to the Protection of Civilian Persons in the Time of War Geneva 12 August 1949;
Tab 90: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977;
Tab 91: ICRC List of States party to the Geneva Conventions and their Additional Protocols
Tab 92: Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977.

[3] Consequential Order on Judicial Notice, Annex II, Part II.

ANNEX E: TABLE OF AUTHORITIES

1. Judgements and Decisions

1.1. Special Court for Sierra Leone

AFRC Case

Kanu **Decision on Form of Indictment**	*Prosecutor v. Kanu*, SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 19 November 2003
Kamara **Decision on Form of Indictment**	*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment (TC), 1 April 2004
AFRC **Indictment**	*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT, Further Amended Consolidated Indictment, 18 February 2005
AFRC **Decision to Exclude Evidence**	*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95 (TC), 24 May 2005
AFRC **Rule 98 Decision**	*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 31 March 2006
AFRC **Trial Judgement**	*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Judgement (TC), 20 June 2007
AFRC **Appeal Judgement**	*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-A, Judgment (AC), 22 February 2008

CDF Case

Norman **Decision on Protective Measures**	*Prosecutor v. Norman*, SCSL-03-08-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 23 May 2003
Kondewa **Ruling on Protective Measures**	*Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and urgent Request for Interim Measures until Appropriate Protective Measures are in Place (TC), 10 October 2003
Fofana **Decision on Protective Measures**	*Prosecutor v. Fofana*, SCSL-03-11-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 16 October 2003
Kondewa **Decision on Form of Indictment**	*Prosecutor v. Kondewa*, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, Case No. SCSL-2003-12-PT, 27 November 2003

CDF Indictment	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-I, Indictment, 4 February 2004
Fofana Decision on Personal Jurisdiction	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana, 3 March 2004
CDF Appeal Decision on Nature of Armed Conflict	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR72(E), Decision on Preliminary Motion on Lack of Jurisdiction *Materiae*: Nature of the Armed Conflict (AC), 25 May 2004
CDF Appeal Decision on Child Recruitment	*Prosecutor v. Norman, Kondewa and Fofana*, SCSL-04-14-AR72(E), Decision on Preliminary Motion based on Lack of Jurisdiction (Child Recruitment) (AC), 31 May 2004
CDF Decision on Modification of Protective Measures	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses (TC), 8 June 2004
CDF Decision on Disclosure of Witness Statements and Cross-Examination	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Disclosure of Witness Statements and Cross-Examination (TC), 16 July 2004
Norman Decision on Service and Arraignment	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment (TC), 29 November 2004
Fofana Appeal Decision Refusing Bail	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR65, Fofana - Appeal Against Decision Refusing Bail (AC), 11 March 2005
CDF Appeal Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana - Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence" (AC), 16 May 2005
Norman Appeal Decision on Amendment of Indictment	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Decision on Amendment of the Consolidated Indictment (AC), 16 May 2005
CDF Decision on Calling Additional Witnesses	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures (TC), 21 June 2005
CDF Decision on Admission of Certain Evidence	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92*bis* and 89 (C) (TC), 15 July 2005
CDF Rule 98 Decision	*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98 (TC), 21 October 2005
CDF Trial Judgement	*Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, Judgement (TC), 2 August 2007

***CDF* Appeal Judgement**	*Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgment (AC), 28 May 2008

RUF Case

***Sesay* Bill of Particulars**	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Bill of Particulars, 3 November 2003
***Sesay* Decision on Form of Indictment**	*Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-2003-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003
Prosecution Request to Amend Indictment	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-05-14-PT, Request for Leave to Amend the Indictment, 9 February 2004
Prosecution Pre-Trial Brief	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-PT, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis) of 13 February 2004, 1 March 2004
***Kallon* Decision on Challenge to Jurisdiction**	*Prosecutor v. Kallon*, SCSL-04-15-AR72(E), *and Kamara*, SCSL-04-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty (TC), 13 March 2004
***Kallon* Decision on Motion to Quash**	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Kallon - Decision on Motion for Quashing of Consolidated Indictment (TC), 21 April 2004
Prosecution Supplemental Pre-Trial Brief	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-PT, Prosecution Supplemental Pre-Trial Brief Pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 30 March 2004 as Amended by Order to Extend the Time for Filing of the Prosecution Supplemental Pre-Trial Brief of 2 April 2004, 21 April 2004
First Prosecution Motion to Call Additional Witnesses	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Request for Leave to Call Additional Witnesses and Disclose an Additional Witness Statement, 12 July 2004
Decision on Additional Witnesses	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request to Call Additional Witnesses (TC), 29 July 2004
Second Prosecution Motion to Call Additional Witnesses	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements Pursuant to Rules 66(A)(ii) and 73*bis*(E), 23 November 2004
***Kallon* Decision on Urgent Matters**	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Matters of Urgent Concern to the Accused Morris Kallon, 9 December 2004
Decision on TF1-015 Disclosure	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Ruling on Disclosure Regarding Witness TF1-015 (TC), 28 January 2005
Ruling on Exclusion of	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Ruling on Oral

TF1-141 Statements	Application for the Exclusion of Statements of Witness TF1-141 Dated Respectively 9th of October, 2004, 19th and 20th of October, 2004, and 10th January 2005 (TC), 3 February 2005
Ruling on Command Structure Chart	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Admission of Command Structure Chart as an Exhibit (TC), 4 February 2005
***Gbao* Ruling on Koker Evidence**	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker (TC), 23 May 2005
Consequential Order on Judicial Notice	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Consequential Order Regarding Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence (TC), 24 May 2005
Decision on Witness TF1-108	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Ruling on Defence Evidentiary Objections Concerning Witness TF1-108 (TC), 15 June 2006
Decision on Prosecution Application to Amend the Indictment	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Application for Leave to Amend the Indictment (TC), 31 July 2006
Indictment	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Corrected Amended Consolidated Indictment, 2 August 2006
Prosecution Rule 98 Skeleton Response	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Consolidated Prosecution Skeleton Response to the Rule 98 Motions by the Three Accused, 6 October 2006
RUF Oral Rule 98 Decision	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15T, Oral Decision on RUF Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 25 October 2006
Kallon Agreed Facts	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL 2004-15-T, Kallon Defence Filing in Compliance with Scheduling Order Concerning the Preparation and Commencement of the Defence Case, 5 March 2007
Prosecution Notice Concerning JCE	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Notice Concerning Joint Criminal Enterprise and Raising Defects in the Indictment, 3 August 2007
Gbao Request for Leave on Form of Indictment	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Gbao Request for Leave to Raise Objections to the Form of the Indictment, 23 August 2007
***Gbao* Decision on Request to Raise Objections to the Form of the Indictment**	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Decision on Gbao Request for Leave to Raise Objections to the Form of the Indictment (TC), 17 January 2008
***Kallon* Order on Challenges to Indictment**	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL 2004-15-T, Order Relating to Kallon Motion Challenging Defects in the Form of the

	Indictment and Annexes A, B and C (TC), 31 January 2008
***RUF* Motion on Challenges to the Indictment**	*Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-2004-15-T, Motion on Challenges to the Form of the Indictment and for Reconsideration of Order Rejecting Filing and Imposing Sanctions, 7 February 2008
***Kallon* Exclusion Motion**	*Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-2004-15-T, Kallon Motion to Exclude Evidence Outside the Scope of the Indictment with Confidential Annex A, 14 March 2008
Prosecution Notice re Count 7	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Notice re Count 7, 29 April 2008
***Kallon* Decision on Exclusion Motion**	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Kallon Motion to Exclude Evidence Outside the Scope of the Indictment, 26 June 2008
Prosecution Final Trial Brief	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Prosecution Final Trial Brief, 29 July 2008
Kallon Final Trial Brief	*Prosecutor v. Sesay, Kallon and Gbao*, Confidential Morris Kallon Final Trial Brief, 29 July 2008
Gbao Trial Brief	*Prosecutor v. Sesay, Kallon and Gbao*, Confidential Gbao Final Trial Brief, 29 July 2008
Sesay Final Trial Brief	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Confidential Sesay Final Trial Brief, 1 August 2008

1.2. International Criminal Tribunal for Rwanda

Prosecutor v. Akayesu

***Akayesu* Defence Motion**	*Prosecutor v. Akayesu*, ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness (TC), 9 March 1998
***Akayesu* Trial Judgement**	*Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement (TC), 2 September 1998
***Akayesu* Appeal Judgement**	*Prosecutor v. Akayesu*, ICTR-96-4-A, Judgement (AC), 1 June 2001

Prosecutor v. Bagilishema

***Bagilishema* Trial Judgement**	*Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgement (TC), 7 June 2001
***Bagilishema* Appeal Judgement**	*Prosecutor v. Bagilishema*, ICTR-95-1A-A, Judgement (Reasons) (AC), 3 July 2002

Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva

Ntabakuze and Kabiligi **Motions to Void the Indictment**	*Prosecutor v. Ntabakuze and Kabiligi*, ICTR-96-34-I, Decision on the Defence Motions Objecting to a Lack of Jurisdiction and Seeking to Declare the Indictment Void ab initio (TC), 13 April 2000
Ntabakuze **Interlocutory Appeal Decision**	*Prosecutor v. Bagosora, Kabiligi, Ntabakuze, Nsengiyumva*, ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006

Prosecutor v. Bikindi

Bikindi **Trial Judgement**	*Prosecutor v. Bikindi*, ICTR-01-72-T, Judgement (TC), 2 December 2008

Prosecutor v. Gacumbitsi

Gacumbitsi **Appeal Judgement**	*Prosecutor v. Gacumbitsi*, ICTR-01-64-A, Judgement (AC), 7 July 2006

Prosecutor v. Kajelijeli

Kajelijeli **Appeal Judgement**	*Prosecutor v. Kajelijeli*, ICTR-98-44A-A, Judgement (AC), 23 May 2005

Prosecutor v. Kamuhanda

Kamuhanda **Appeal Judgement**	*Prosecutor v. Kamuhanda*, ICTR-99-54A-A, Judgement (AC), 19 September 2005

Prosecutor v. Karemera, Ngirumpatse and Nzirorera

Karemera **Appeal Decision on Joint Criminal Enterprise**	*Prosecutor v. Karemera, Ngirumpatse and Nzirorera*, ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise (AC), 12 April 2006

Prosecutor v. Kayishema and Ruzindana

Kayishema and Ruzindana **Trial Judgement**	*Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgement (TC), 21 May 1999
Kayishema and Ruzindana **Appeal Judgement**	*Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Judgement (AC), 1 June 2001

Prosecutor v. Muhimana

Muhimana **Appeal Judgement**	*Prosecutor v. Muhimana*, ICTR-95-1B-A, Judgement (AC), 21 May 2007

Prosecutor v. Musema

Musema **Trial Judgement**	*Prosecutor v. Musema*, ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000
Musema **Appeal Judgement**	*Prosecutor v. Musema*, ICTR-96-13-A, Judgement (AC), 16 November 2001

Prosecutor v. Muvunyi

Muvunyi **Appeal Judgement**	*Prosecutor v. Muvunyi*, ICTR-2000-55A-A, Judgement (AC), 29 August 2008

Prosecutor v. Ndindabahizi

Ndindabahizi **Trial Judgement**	*Prosecutor v. Ndindabahizi*, ICTR-01-71-T, Judgement and Sentence (TC), 15 July 2004
Ndindabahizi **Appeal Judgement**	*Prosecutor v. Ndindabahizi*, ICTR-01-71-A, Judgement (AC), 16 January 2007

Prosecutor v. Niyitegeka

Niyitegeka **Trial Judgement**	*Prosecutor v. Niyitegeka*, ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003
Niyitegeka **Appeal Judgement**	*Prosecutor v. Niyitegeka*, ICTR-96-14-A, Judgment (AC), 9 July 2004

Prosecutor v. Ntagerura, Bagambiki and Imanishimwe

Ntagerura **Appeal Judgement**	*Prosecutor v. Ntagerura, Bagambiki and Imanishimwe*, ICTR-99-46-A, Judgement (AC), 7 July 2006

Prosecutor v. Ntakirutimana and Ntakirutimana

Ntakirutimana **Appeal Judgement**	*Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004

Prosecutor v. Rutaganda

Rutaganda **Trial Judgement**	*Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999
Rutaganda **Appeal Judgement**	*Prosecutor v. Rutaganda*, ICTR-96-3-A, Judgement (AC), 26 May 2003

Prosecutor v. Semanza

Semanza **Trial Judgement**	*Prosecutor v. Semanza*, ICTR-97-20-T, Judgement and Sentence (TC),

	15 May 2003
***Semanza* Appeal Judgement**	*Prosecutor v. Semanza*, ICTR-97-20-A, Judgement (AC), 20 May 2005

Prosecutor v. Seromba

***Seromba* Appeal Judgement**	*Prosecutor v. Seromba*, ICTR-01-66-A, Judgement (AC), 12 March 2008

Prosecutor v. Simba

***Simba* Decision on Form of Indictment**	*Prosecutor v. Simba*, Case No. ICTR-01-76-I, Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment (TC), 6 May 2004
***Simba* Appeal Judgement**	*Prosecutor v. Simba*, ICTR-01-76-A, Judgement (AC), 27 November 2007

1.3. International Criminal Tribunal for the former Yugoslavia

Prosecutor v. Aleksovski

***Aleksovski* Appeal Decision on Admissibility of Evidence**	*Prosecutor v. Aleksovski*, IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence (AC), 16 February 1999
***Aleksovski* Trial Judgement**	*Prosecutor v. Aleksovski*, IT-95-14/1-T, Judgement (TC), 25 June 1999
***Aleksovski* Appeal Judgement**	*Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement (AC), 24 March 2000

Prosecutor v. Blagojevic and Jokic

***Blagojevic and Jokic* Trial Judgement**	*Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Judgement (TC), 17 January 2005

Prosecutor v. Blaskic

***Blaskic* Trial Judgement**	*Prosecutor v. Blaskic*, IT-95-14-T, Judgement (TC), 3 March 2000
***Blaskic* Appeal Judgement**	*Prosecutor v. Blaskic*, IT-95-14-A, Judgement (AC), 29 July 2004

Prosecutor v. Brdjanin

***Talic* Decision on Form of Indictment**	*Prosecutor v. Brdjanin and Talic*, IT-99-36-1, Decision on Objections by Momir Talic to the Form of the Amended Indictment (TC), 20 February 2001
***Brdjanin* Trial**	*Prosecutor v. Brdjanin*, IT-99-36-T, Judgement (TC), 1 September 2004

Judgement	
***Brdjanin* Appeal Judgement**	*Prosecutor v. Brdjanin*, IT-99-36-A, Judgement (AC), 3 April 2007

Prosecutor v. Delalic, Mucic, Delic and Landzo (Celibici Case)

***Celibici* Trial Judgement**	*Prosecutor v. Delalic, Mucic, Delic and Landzo*, Judgement, IT-96-21-T, Judgement (TC), 16 November 1998
***Celibici* Appeal Judgement**	*Prosecutor v. Delalic, Mucic, Delic and Landzo*, Judgement, IT-96-21-A, Judgement (AC), 20 February 2001
	Prosecutor v. Delalic, Mucic, Delic and Landzo, IT-96-21-A, Partial Dissenting Opinion of Judge Shahabuddeen, (AC), 20 February 2001

Prosecutor v. Djordjevic

Prosecutor v. Djordjevic, IT-05-87/1-PT, Decision on Form of Indictment, 3 April 2008

Prosecutor v. Furundzija

***Furundzija* Trial Judgement**	*Prosecutor v. Furundzija*, IT-95-17/1-T, Judgement (TC), 10 December 1998

Prosecutor v. Galic

***Galic* on Expert Witness**	*Prosecutor v. Galic*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps (TC), 3 July 2002
***Galic* Trial Judgement**	*Prosecutor v. Galic*, IT-98-29-T, Judgement (TC), 5 December 2003
***Galic* Appeal Judgement**	*Prosecutor v. Galic*, IT-98-29-A, Judgement (AC), 30 November 2006

Prosecutor v. Hadzihasanovic, Alagic and Kubura

***Hadzihasanovic et al.* Appeal Decision on Command Responsibility**	*Prosecutor v. Hadzihasanovic, Alagic and Kubura*, IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility (AC), 16 July 2003
***Hadzihasanovic et al.* Appeal Decision, Dissenting Opinion of Judge Shahabuddeen**	*Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-AR72, Partially Dissenting Opinion of Judge Shahabuddeen, 16 July 2003
***Hadzihasanovic et al.* Appeal Decision, Dissenting Opinion of Judge Hunt**	*Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-AR72, Separate and Partially Dissenting Opinion of Judge David Hunt *Command Responsibility Appeal*, 16 July 2003
Hadzihasanovic et al.	*Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-AR73.3, Decision

Rule 98bis Decision	on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal (AC), 11 March 2005
***Hadzihasanovic and Kubura* Appeal Judgement**	*Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-A, Judgement (AC), 22 April 2008

Prosecutor v. Halilovic

***Halilovic* Trial Judgement**	*Prosecutor v. Halilovic*, IT-01-48-T, Judgement (TC), 16 November 2005
***Halilovic* Appeal Judgement**	*Prosecutor v. Halilovic*, IT-01-48-A, Judgement (AC), 16 October 2007

Prosecutor v. Haradinaj, Balaj and Brahimaj	
***Haradinaj* Trial Judgement**	*Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, Judgement (TC), 3 April 2008

Prosecutor v. Miodrag Jokic

***Jokic* Sentencing Appeal**	*Prosecutor v. Miodrag Jokic*, IT-01-42/1-A, Judgement on Sentencing Appeal, 30 August 2005

Prosecutor v. Kordic and Cerkez

***Kordic and Cerkez* Trial Judgement**	*Prosecutor v. Kordic and Cerkez*, IT-95-14/2-T, Judgement (TC), 26 February 2001
***Kordic and Cerkez* Appeal Judgement**	*Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgement (AC), 17 December 2004

Prosecutor v. Krajisnik

***Krajisnik* Trial Judgement**	*Prosecutor v. Krajisnik*, IT-00-39-T, Judgement (TC), 27 September 2006

Prosecutor v. Krnojelac

***Krnojelac* First Decision on Form of Indictment**	*Prosecutor v. Krnojelac*, Case No. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment (TC), 24 February 1999
***Krnojelac* Second Decision on Form of Indictment**	*Prosecutor v. Krnojelac*, IT-97-25-T, Decision on Form of Second Amended Indictment (TC), 11 May 2000
***Krnojelac* Trial Judgement**	*Prosecutor v. Krnojelac*, IT-97-25-T, Judgement (TC), 15 March 2002
***Krnojelac* Appeal**	*Prosecutor v. Krnojelac*, IT-97-25-A, Judgement (AC), 17 September

Prosecutor v. Krstic

***Krstic* Trial Judgement**	*Prosecutor v. Krstic*, IT-98-33-T, Judgement (TC), 2 August 2001
***Krstic* Appeal Judgement**	*Prosecutor v. Krstic*, IT-98-33-A, Judgement (AC), 19 April 2004

Prosecutor v. Kunarac, Kovac and Vukovic

***Kunarac et al.* Decision on Exclusion of Evidence**	*Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & IT-96-23/1, Decision on Prosecution's Motion for Exclusion of Evidence and Limitation of Testimony (TC), 3 July 2000
***Kunarac et al.* Trial Judgement**	*Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23-T & IT-96-23/1-T, Judgement (TC), 22 February 2001
***Kunarac et al.* Appeal Judgement**	*Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23-A & IT-96-23/1-A, Judgement (AC), 12 June 2002

Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic

***Kupreskic et al.* Trial Judgement**	*Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-T, Judgement (TC), 14 January 2000
***Kupreskic et al.* Appeal Judgement**	*Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-A, Judgement (AC), 23 October 2001

Prosecutor v. Kvocka, Kos, Radic, Zigic and Prcac

***Kvocka et al.* Decision on Form of Indictment**	*Prosecutor v. Kvocka, Kos, Radic, Zigic*, Case No. IT-98-30/1, Decisions on Defence Preliminary Motions on the Form of the Indictment (TC), 12 April 1999
***Kvocka et al.* Trial Judgement**	*Prosecutor v Kvocka, Kos, Radic, Zigic and Prcac*, IT-98-30/1-T, Judgement (TC), 2 November 2001
***Kvocka et al.* Appeal Judgement**	*Prosecutor v Kvocka, Radic, Zigic and Prcac*, IT-98-30/1-A, Judgement (AC), 28 February 2005

Prosecutor v. Limaj, Bala and Musliu

***Limaj et al.* Trial Judgement**	*Prosecutor v. Limaj, Bala and Musliu*, IT-03-66-T, Judgement (TC), 30 November 2005
***Limaj et al.* Appeal Judgement**	*Prosecutor v. Limaj, Balia and Musliu*, IT-03-66-A, Judgment (AC), 27 September 2007

Prosecutor v. Martic

***Martic* R61 Decision**	*Prosecutor v. Martic*, IT-95-11-R61, Decision (TC), 8 March 1996
***Martic* Trial Judgement**	*Prosecutor v. Martic*, IT-95-11-T, Judgement (TC), 12 June 2007

***Martic* Appeal Judgement**	*Prosecutor v. Martic*, IT-95-11-A, Judgement (AC), 8 October 2008

Prosecutor v. Dragomir Milosevic

***D. Milosevic* Trial Judgement**	*Prosecutor v. Dragomir Milosevic*, IT-98-29/1-T, Judgement (TC), 12 December 2007

Prosecutor v. Milutinovic, Sainovic and Ojdanic

***Ojdanic* Appeal Decision on Joint Criminal Enterprise**	*Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-99-37-AR72, Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction – Joint Criminal Enterprise (AC), 21 May 2003
***Pavkovic* Decision on Form of Indictment**	*Prosecutor v. Milutinovic, Sainovic, Ojdanic, Pavkovic, Lazarevic, Djordjevic and Lukic*, IT-05-87-PT, Decision on Nebojsa Pavkovic's Preliminary Motion on Form of Indictment (TC), 22 July 2005
***Ojdanic* Decision on Indirect Co-Perpetration**	*Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-05-87-PT, Decision on Ojdanic's Motion Challenging Jurisdiction: Indirect Co-Perpetration (TC), 22 March 2006

Prosecutor v. Naletilic and Martinovic

***Naletilic and Martinovic* Trial Judgement**	*Prosecutor v. Naletilic and Martinovic*, IT98-34-T, Judgement (TC), 31 March 2003
***Naletilic and Martinovic* Appeal Judgement**	*Prosecutor v. Naletilic and Martinovic*, IT-98-34-A, Judgement (AC), 3 May 2006

Prosecutor v. Oric

***Oric* Trial Judgement**	*Prosecutor v. Oric*, IT-03-68-T, Judgement (TC), 30 June 2006
***Oric* Appeal Judgement**	*Prosecutor v. Oric*, IT-03-68-A, Judgement (AC), 3 July 2008

Prosecutor v. Pavkovic, Lazarevic, Dordevic and Lukic

***Lukic* Decision on Form of Indictment**	*Prosecutor v. Pavkovic, Lazarevic, Dordevic and Lukic*, Case No. IT-03-70-PT, Decision on Sreten Lukic's Preliminary Motion on Form of Indictment (TC), 8 July 2005

Prosecutor v. Simic

***Simic* Appeal Judgement**	*Prosecutor v. Simic*, IT-95-9-A, Judgement (AC), 28 November 2006

Prosecutor v. Stakic

***Stakic* Trial Judgement**	*Prosecutor v. Stakic*, IT-97-24-T, Judgement (TC), 31 July 2003
***Stakic* Appeal Judgement**	*Prosecutor v. Stakic*, IT-97-24-A, Judgement (AC), 22 March 2006

Prosecutor v. Strugar

Strugar **Trial Judgement**	*Prosecutor v. Strugar*, IT-01-42-T, Judgement (TC), 31 January 2005
Strugar **Appeal Judgement**	*Prosecutor v. Strugar*, IT-01-42-A, Judgement (AC), 17 July 2008

Prosecutor v. Tadic

Tadic **Appeal Decision on Jurisdiction**	*Prosecutor v. Tadic*, IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (AC), 2 October 1995
Tadic **Trial Judgement**	*Prosecutor v. Tadic*, IT-94-1-T, Judgement (TC), 7 May 1997
Tadic **Appeal Judgement**	*Prosecutor v. Tadic*, IT-94-1-A, Judgement (AC), 15 July 1999

Prosecutor v. Tolimir

Tolomir **Decision on Form of Indictment**	*Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Decision on Preliminary Motions on the Indictment Pursuant to Rule 72 of the Rules (TC), 14 December 2007

Prosecutor v. Vasiljevic

Vasiljevic **Trial Judgement**	*Prosecutor v. Vasiljevic*, IT-98-32-T, Judgement (TC), 29 November 2002
Vasiljevic **Appeal Judgement**	*Prosecutor v. Vasiljevic*, IT-98-32-A, Judgement (AC), 25 February 2004

1.4. World War II Tribunals

United States v. Josef Altstoetter

Justice **Case**	*United States of America v. Josef Altstoetter, et al. (Case 3)*, U.S. Military Tribunal, October 1946 - April 1949, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (1951)*, vol. III

United States v. Ernst von Weizsaecker et al.

Ministries **Case**	*United States of America v. Ernst von Weizsaecker et al. (Case 11)*, Motion by General Spokesman for Defence Counsel, 18 December 1947 and Order of the Tribunal Denying Defense Motions, Jan. 5, 1948, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, vol. XV*

United States v. Greitfelt et al.

RuSHA Case	*United States v. Greifelt et al.*, U.S. Military Tribunal, Judgement, 10

March 1948, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (1951)*, vol. V

Trial of Erich Heyer and Six Others

Essen Lynching Case	*Trial of Erich Heyer and six others* ("Essen Lynching Case"), British Military Court for the Trial of War Criminals, Essen, 18th-19th and 21st-22nd December, 1945, I UNWCC 88

Trial of Martin Gottfired Weiss and Thirty-Nine Others

The Dachau Concentration Camp Trial	*Trial of Martin Gottfired Weiss and Thirty-Nine Others* ("The Dachau Concentration Camp Trial"), General Military Government Court of the United States Zone, Dachau, Germany, 15th November – 13th December 1945, XI UNWCC 5

Supreme Court for the British Zone Case no. 17

British Zone Case 17	Supreme Court for the British Zone, *Case no. 17*, Strafsenat. Urteil vom 8 Februar 1949 gegen S. StS 120/48, vol. I

Supreme Court for the British Zone Case no. 66

British Zone Case 66	Supreme Court for the British Zone, *Case no. 66*, Strafsenat. Urteil vom 8 Februar 1949 gegen S. StS 120/48, vol. II

1.5. Other International Jurisdictions

International Court of Justice

***Certain Expenses* ICJ Advisory Opinion**	*Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, Advisory Opinion, 1962 ICJ Reports 151, 20 July 1962
Military and Paramilitary Activities in and against Nicaragua	*Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, 1986 ICJ Reports 14
Armed Activities in the Congo	*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, (2005) ICJ General List No. 116, 19 December 2005
Palestinian Wall Case	*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, 2004 ICJ Reports 136, 9 July 2004

Inter-American Court of Human Rights

***Tablada* Case**	*Juan Carlos Abella v. Argentina*, Case 11.137, Report N° 55/97, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 271 (1997)

International Criminal Court

***Lubanga* Confirmation of Charges**	*Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007

1.6. National Jurisdictions

Israel

Targeted Killings Case	*Public Committee against Torture in Israel et al. v. Government of Israel et al.* [2006] HCJ 769/02

2. International Legal Documents

2.1. Treaties, Conventions and Protocols

Lieber Code	*Instructions for the Government of the United States in the Field by Order of the Secretary of War*, Washington, D.C., General Orders No. 100, 24 April 1863
Hague Regulations, 1899	Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899
Hague Regulations, 1907	Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907
UN Charter	Charter of the United Nations, June 26, 1945, UNTS 993, entered into force Oct. 24, 1945
Geneva Convention I	UN Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S. 31 (entered into force 21 October 1950)
Geneva Convention II	UN Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces in at Sea, 12 August 1949, 75 U.N.T.S. 85 (entered into force 21 October 1950)
Geneva Convention III	UN Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135 (entered into force 21 October 1950)
Geneva Convention IV	UN Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 (entered into force 21 October 1950)
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed

	Conflicts, 8 June 1977, 1125 U.N.T.S. 609 (entered into force 7 December 1978)
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflict, June 8, 1977, 1125 U.N.T.S. 609 (entered into force 7 December 1978)
Convention on the Safety of United Nations and Associated Personnel	Convention on the Safety of United Nations and Associated Personnel, UN GA Res. 49/59, 9 December 1994

2.2. Commentaries

ICRC Commentary on Additional Protocols	Yves Sandoz, Christophe Swinarski and Bruno Zimmerman, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: ICRC/Martinus Nijhoff Publishers, 1987)
ICRC Commentary on Geneva Convention IV	Oscar Uhler and Henri Coursier, eds., *Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949: commentary*, (Geneva: ICRC, 1958)

2.3. United Nations Documents

Reports

Secretary-General Report on SC 340	Report of the Secretary-General on the Implementation of Security Council Resolution 340 (1973), 27 October 1973, S/11052/Rev.1
Secretary General Report on UN 50th Anniversary	Report of the Secretary-General, *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, 3 January 1995, A/50/60-S/1995/1
ICC Preparatory Committee Report	Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF.183/2/Add.1, 14 April 1998
Final Report of the Special Rapporteur	Final report submitted by Ms. Gay J. McDougall, Special Rapporteur, *Contemporary Forms of Slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict*, Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Minorities, E/CN.4/Sub.2/1998/13, 22 June 1998
Update to Final Report of Special Rapporteur	Update to Final report submitted by Ms. Gay J. McDougall, Special Rapporteur, *Contemporary Forms of Slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict*, Economic and Social Council, Commission on Human Rights, Sub-Commission

	on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2000/21, 6 June 2000
Brahimi Report	Report of the Panel on United Nations Peace Operations, A/55/305-S/2000/809, 21 August 2000
Report of the Secretary-General on the Establishment of the Special Court	Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000
UNCHR Report	Report of the United Nations High Commissioner for Human Rights, *Systematic rape, sexual slavery and slavery-like practices during armed conflicts*, General Assembly, Human Rights Council, Sub-Commission on the Promotion and Protection of Human Rights, A/HRC/Sub.1/58/23, 11 July 2006

Security Council Resolutions

SC Res 1820	United Nations Security Council Resolution 1820 (2008)

General Assembly Resolutions

GA Res 377	*Uniting for Peace*, UN GA Res. 377(V), 3 November 1950

Statements

President's Statement	UN Security Council, Statement by the President, UN Doc. S/PRST/1998/5, 26 February 1998

Charters and Statutes

Nürnberg Charter	Annex to the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis (London Agreement), London, 8 Aug. 1945, 85 U.N.T.S. 251
Control Council Law No. 10	Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, Allied Control Council Law No. 10, 20 December 1945, Official Gazette of the Control Council for Germany, No. 3, 31 January 1946
IMTFE Tokyo Charter	Charter for the International Military Tribunal for the Far East (1946), Special Proclamation by the Supreme Commander for the Allied Powers, as amended 26 April 1946, T.IA.S. No. 1589
ICTY Statute	*Updated Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*, UN SC Res. 1660 (2006)

ICTR Statute	*Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Other Such Violations Committed in the Territory of Neighbouring States*, UN SC Res. 955 (1994)
Statute	Statute of the Special Court for Sierra Leone, annexed to the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, United Nations and Sierra Leone, 16 January 2002, 2178 U.N.T.S. 138
ICC Statute	Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90 (entered into force July 1, 2002)
ICC Elements of Crimes	International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000)

3. Domestic legislation

Geneva Conventions Enabling Act	*Sierra Leone Act No 26 of 1959*, "An Ordinance to enable effect to be given to certain International Conventions done at Geneva on the 12th day of August, 1949 and for purposes connected therewith"
Police Act	*An Act to Consolidate and Amend the Law Relating to the Organisation, Discipline, Powers and Duties of the Police Force*, 4 June 1964
Sierra Leone Constitution	*The Constitution of Sierra Leone, 1991* (Act No. 6 of 1991)

4. Secondary sources

Books

DPKO, Introduction to Peacekeeping	Department of Peacekeeping Operation, *An Introduction to United Nations Peacekeeping*, Chapter 1: An Evolving Technique, available at http://www.un.org/Depts/dpko/dpko/intro/1.htm
Archbold, International Criminal Courts	Rodney Dixon, Karim Khan and Richard May, eds., *Archbold International Criminal Courts Practice, Procedure and Evidence* (London: Sweet & Maxwell, 2003)
Dinstein, *War, Aggression and Self-Defence*	Yoram Dinstein, *War, Aggression and Self-Defence*, 3rd ed (Cambridge: Cambridge University Press, 2001)
Dörmann, *ICC Elements of War Crimes*	Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court – Sources and Commentary* (Cambridge, UK: ICRC and Cambridge University Press, 2003)

Findlay, *Use of Force in UN Operations*	Trevor Findlay, *The Use of Force in UN Peace Operations* (Oxford: Oxford University Press, 2002)
Gray, *International Law and the Use of Force*	Christine Gray, *International Law and the Use of Force*, 3rd ed., (Oxford: Oxford University Press, 2008)
Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Volume I	Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law, Volume 1: Rules* (Cambridge: Cambridge University Press: 2005)
IIHL, *Manual on Non-International Armed Conflict*	International Institute of Humanitarian Law, *The Manual on the Law of Non-International Armed Conflict with Commentary*, (San Remo: IIHL, 2006)
Kalshoven and Zegveld, *Constraints on Waging War*	Frits Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War. An Introduction to International Humanitarian Law*, 3rd ed, (Geneva: ICRC, 2001)
Lee, *International Criminal Court*	Roy S. Lee, ed., *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Transnational Publishers, Ardsley, New York: 2001)
May and Wierda, *International Criminal Evidence*	Judge Richard May and Marieke Wierda, *International Criminal Evidence* (New York: Transnational Publishers, 2002)
Murphy, *On Evidence*	Peter Murphy, *Murphy on Evidence*, 10th ed., (Oxford: Oxford University Press, 2008)
Rowe, Human Rights and Armed Forces	Peter Rowe, *The Impact of Human Rights Law on Armed Forces* (New York: Cambridge University Press, 2006)
Simma, *Charter Commentary*	Bruno Simma et al., *The Charter of the United Nations: a Commentary*, 2nd ed., vol. I (Oxford: Oxford University Press, 2002)
Thompson, *Constitutional History of Sierra Leone*	Bankole Thompson, *The Constitutional History and Law of Sierra Leone (1961-1995)* (Lanham: University Press of American Inc., 1997)
Triffterer, *Commentary on Rome Statute*	Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article* (Baden-Baden: Nomos Verl.-Ges, 1999)
UN, *Blue Helmets*	United Nations, *The Blue Helmets: A Review of United Nations Peacekeeping*, 2nd ed. (New York: United Nations, 1990)
Peacekeeping: Frequently Asked Questions	United Nations, *United Nations Peacekeeping: Meeting New Challenges, Frequently Asked Questions* (United Nations, 2006)
Peacekeeping Principles and Guidelines	United Nations, Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (United Nations, 2008)
Werle, *ICL Principles*	Gerhard Werle, *Principles of International Criminal Law* (The Hague:

	T.M.C. Asser Press, 2005)
White, *Keeping the Peace*	N. D. White, *Keeping the Peace* (Manchester: Manchester University Press, 1997)
Zwanenburg, *Accountability of Peace Support Operations*	Marten Zwanenburg, *Accountability of Peace Support Operations* (Geneva: Martinus Nijhoff Publishers, 2005)

Journal Articles

Brady and Goy, *Current Developments*	Helen Brady and Barbara Goy, "Current Developments at the *Ad Hoc* International Criminal Tribunals" (2008) 6 J. Int'l Crim. Just. 569
Meron, *War Crimes in Yugoslavia*	Theodor Meron, "War Crimes in Yugoslavia and the Development of International Law" (1994) 88 AJIL 78
Schindler, *Different Types of Armed Conflict*	Dietrich Schindler, "The Different Types of Armed Conflict According to the Geneva Conventions and Protocols" (1997) 163 *Recueil des cours* 131

Dictionaries

Black's Law Dictionary	Black's Law Dictionary, 8th Edition, (St. Paul, Minnesota: West, 2004)
Concise Oxford Dictionary	Concise Oxford English Dictionary, 10th Edition, (New York: Oxford University Press, 2002)